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For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 58, No. 201
Wednesday, October 20, 1993

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
Vol. 58, No. 201
Wednesday, October 20, 1993

Presidential Documents

Title 3—

The President

Proclamation 6613 of October 16, 1993

World Food Day, 1993 and 1994

By the President of the United States of America

A Proclamation

Arising from poverty, homelessness, civil strife or famine, hunger burdens the lives of nearly 800 million people throughout the world. Women and children suffer the most. Studies suggest that in developing countries, some 36 percent of children under 6 years of age are moderately or severely undernourished.

On this World Food Day, let us commit ourselves to bringing change to the lives of those who suffer from hunger and to preserving the resources we will need in the years ahead.

Failure to protect our environment now and in the future will clearly affect the ability of countries to produce food and fiber for growing populations. The United Nations has indicated that the world may not be able to feed itself by sometime early in the next century if we continue to abuse productive soil. If world food production is to be maintained and enhanced, we must learn to safeguard the biological diversity that underpins our agricultural system. Today, the biological foundation is imperiled. Traditional crop varieties and animal breeds are becoming endangered. Many are already extinct. When we lose a traditional wheat or rice variety, we lose its unique characteristics and its potential pest and disease resistance, drought tolerance, or nutritional benefits. Nature's diversity is a precious inheritance. We cannot live on this earth without it. Through sound agricultural practices and intelligent shepherding of our natural resources, we can nourish and protect our land, forests, rivers, and streams.

The almost constant threat of famine in Africa and the continuing food problems in Asia should remind us all of our global vulnerability, especially as the population continues to grow. Raising the global community's awareness of the hunger that afflicts the young, the infirm, the poor, and the elderly—and considering the needs of others each day—can bring change and help ensure our food supply for the future.

The Congress, by House Joint Resolution 218, has designated October 16, 1993, and October 16, 1994, as "World Food Day" and has authorized and requested the President to issue a proclamation in observance of these days.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 16, 1993, and October 16, 1994, as World Food Day. I call on all Americans to observe these days with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of October, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

[FR Doc. 93–25952
Filed 10–18–93; 2:59 pm]
Billing code 3195–01–P

Presidential Documents

Proclamation 6614 of October 16, 1993

National Forest Products Week, 1993

By the President of the United States of America

A Proclamation

Our National Forests are a priceless heritage, a gift that we hold in trust for future generations. As stewards of this inheritance, we have the obligation of preserving the capacity of these lands to sustain, not only themselves, but also the species that depend on them. Even as we strive to fulfill this obligation, the American people are asking fundamental questions about how our National Forests are managed and about how best to ensure a healthy and productive land.

Much has already been done to protect our forests. Of the 191 million acres of National Forest, 34 million have been set aside as part of the wilderness preservation system, a system that safeguards wilderness for future use and enjoyment. National Forests include more than 4,300 miles of designated segments of the National Wild and Scenic Rivers Systems. These rivers are maintained in a free-flowing condition for the enjoyment of this and future generations.

Much more remains to be done, and we are only beginning to fathom, however incompletely, the complexities of the ecosystems of which our National Forests are composed. We know that over 250 threatened and endangered species of fish, animals, and plants inhabit National Forests and are dependent on them for survival. We also know that the key to protecting these and other species is to maintain healthy ecosystems through effective management of National Forests. In addition, we now understand that our forests are only one part of a global mosaic of forest ecosystems and that, if we are to be a world leader in environmental conservation, our stewardship must set standards for the world to emulate.

Our National Forests are also vital to our physical and spiritual well-being. National Forests are the single largest provider of outdoor recreation in the United States, providing 288 million visitor days at Forest Service campgrounds, picnic areas, and other recreation attractions in the past year. Products generated from National Forests support jobs for hundreds of thousands of workers, most located in rural America. People whose livelihoods are dependent on forest products industries must be considered as we reexamine the role of National Forests in promoting the welfare of all Americans.

Clearly, we are moving toward a new era in the stewardship of public lands. This new era is one in which we must blend environmental values with the needs of people in such a way that the National Forests represent diverse, healthy, productive, and sustainable ecosystems. Ecosystem management must be grounded on sound science and on compliance with existing law.

In recognition of the central role our forests play in enhancing the welfare of our Nation, the Congress, by Public Law 86–753 (36 U.S.C. 163), has designated the week beginning on the third Sunday in October of each year as "National Forest Products Week" and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week beginning October 17, 1993, as National Forest Products Week and call upon all Americans to observe that week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of October, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

[FR Doc. 93-25951
Filed 10-18-93; 2:58 pm]
Billing code 3195-01-P

Presidential Documents

Executive Order 12872 of October 18, 1993

Blocking Property of Persons Obstructing Democratization in Haiti

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code, and in order to take additional steps with respect to the grave events that have occurred in the Republic of Haiti to disrupt the legitimate exercise of power by the democratically elected government of that country and with respect to the national emergency described and declared in Executive Order No. 12775,

I, WILLIAM J. CLINTON, President of the United States of America, hereby order:

Section 1. Except to the extent provided in regulations, orders, directives, or licenses, which may hereafter be issued pursuant to this order, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order, all property and interests in property of persons:

(a) Who have contributed to the obstruction of the implementation of the United Nations Security Council Resolutions 841 and 873, the Governors Island Agreement of July 3, 1993, or the activities of the United Nations Mission in Haiti;

(b) Who have perpetuated or contributed to the violence in Haiti; or

(c) Who have materially or financially supported any of the foregoing, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are blocked.

Sec. 2. Any transaction subject to U.S. jurisdiction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order, or in Executive Orders Nos. 12775, 12779, or 12853, is prohibited, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order, except to the extent provided in regulations, orders, directives, or licenses issued pursuant to the relevant Executive order and in effect on the effective date of this order.

Sec. 3. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to me by the International Emergency Economic Powers Act, as may be necessary to carry out the purpose of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government, all agencies of which are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order, including suspension or termination of licenses or other authorizations in effect as of the date of this order.

Sec. 4. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 5. (a) This order shall take effect at 11:59 p.m., eastern daylight time on October 18, 1993.

(b) This order shall be transmitted to the Congress and published in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
October 18, 1993.

[FR Doc. 93-25983
Filed 10-18-93; 4:26 pm]
Billing code 3195-01-P

Editorial note: For the President's message to Congress and a statement by the Press Secretary on these further sanctions against Haiti, see issue 42 of the *Weekly Compilation of Presidential Documents.*

Rules and Regulations

Federal Register
Vol. 58, No. 201
Wednesday, October 20, 1993

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-CE-31-AD; Amendment 39-8714; AD 93-20-06]

Airworthiness Directives: Ayres Corporation S2D and S2R Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Ayres Corporation (Ayres) S2D and S2R series airplanes. This action requires inspecting the existing aluminum outboard wing huckbolts for damage (cracks, fatigue, or shearing), replacing the aluminum outboard wing huckbolts with steel huckbolts immediately if damaged huckbolts are found or, if no damaged huckbolts are found, replacing the huckbolts within a certain amount of airplane usage. Investigation of a recent in-flight incident where an Ayres Model S2R airplane lost stiffness in the outboard wing section revealed shearing of aluminum outboard wing huckbolts that hold the top main spar cap to the spar web. The actions specified by this AD are intended to prevent structural damage to the wing caused by damaged huckbolts, which could result in loss of control of the airplane.

DATES: Effective December 3, 1993. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 1993.

ADDRESSES: Service information that applies to this AD may be obtained from the Ayres Corporation, P.O. Box 3090, Albany, Georgia 31708; Telephone (912) 883-1440. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Lorenzen, Aerospace Engineer, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-2910; Facsimile (316) 991-3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain Ayres S2D and S2R series airplanes was published in the **Federal Register** on June 22, 1993 (58 FR 33920). The action proposed to require inspecting the existing aluminum outboard wing huckbolts for damage (cracks, fatigue, or shearing), replacing the aluminum outboard wing huckbolts with steel huckbolts immediately if any damaged huckbolts are found or, if no damaged huckbolts are found, replacing the aluminum huckbolts with steel huckbolts within a certain amount of airplane usage. The proposed actions would be accomplished in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Ayres Service Bulletin No. SB-AG-33, dated February 24, 1993.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 1,700 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 11 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $40 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,096,500. These figures take into account that none of the affected airplane operators have accomplished the required actions.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

93-20-06 Ayres Corporation: Amendment 39-8714; Docket No. 93-CE-31-AD.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial Nos.
S2D	All serial numbers.
S2R	5000 through 5099, 1380R, and 1416R through 2582R.
S2R–R1340 ..	R1340–001 through R1340–028 (with or without DC suffix).
S2R–R3S	R3S–001 through R3S–011 (with or without DC suffix).
S2R–R1820 ..	R1820–001 through R1820–035 (with or without DC suffix).
S2R–T11	T11–001 through T11–005 (with or without DC suffix).
S2R–T15	T15–001 through T15–029 (with or without DC suffix); and T27–001 through T27–029 (with or without DC suffix).
S2R–T34	6000 through 6049, T34–001 through T34–143, T34–145, T34–147 through T34–167, T34–170, T34–171, and T34–180 (with or without DC suffix); and T41–001 through T41–143, T41–145, T41–147 through T41–167, T41–170, T41–171, and T41–180 (with or without DC suffix).
S2R–T45	T45–001 (with or without DC suffix).

Compliance: Required as indicated, unless already accomplished.

Note 1: The compliance times specified in this AD take precedence over those referenced in Ayres Service Bulletin (SB) No. SB–AG–33, dated February 24, 1993.

To prevent structural damage to the wing caused by damaged aluminum outboard wing huckbolts, which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 50 hours time-in-service after the effective date of this AD, inspect the existing aluminum outboard wing huckbolts for cracks, shearing, or fatigue in accordance with the ACCOMPLISHMENT INSTRUCTIONS: I. Inspection, section of Ayres SB No. SB–AG–33, dated February 24, 1993.

(1) If sheared, cracked, or fatigued aluminum outboard wing huckbolts are found, prior to further flight, replace the last 13 vertical rows of aluminum huckbolts with NAS 1103 steel bolts or with steel huckbolts in accordance with the ACCOMPLISHMENT INSTRUCTIONS: II. Repair, section of Ayres SB No. SB–AG–33, dated February 24, 1993.

(2) If no cracked, sheared, or fatigued huckbolts are found, reinspect at intervals not to exceed 100 hours TIS. Accomplish no more than five 100-hour inspection repetitions before replacing the huckbolts as required by paragraph (b) of this AD.

Note 2: The FAA established the compliance times of the initial inspection and the repetitive inspections to coincide with the replacement compliance time specified in paragraph (b) of this AD.

(b) Within the next 650 hours TIS after the effective date of this AD, unless already accomplished in accordance with paragraph (a)(1) of this AD, replace the last 13 vertical rows of aluminum huckbolts with NAS 1103 steel bolts or with steel huckbolts in accordance with the ACCOMPLISHMENT INSTRUCTIONS: II. Repair, section of Ayres SB No. SB–AG–33, dated February 24, 1993.

Note 3: The FAA established the replacement compliance time by estimating airplane operation rates in order to allow the operator the opportunity to accomplish the action during the next annual maintenance inspection.

(c) Replacing the huckbolts as specified in paragraph (b) of this AD eliminates the inspection requirement of this AD and may be accomplished prior to 650 hours TIS.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(f) The inspection and replacement required by this AD shall be done in accordance with Ayres Service Bulletin No. SB–AG–33, dated February 24, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the Ayres Corporation, P.O. Box 3090, Albany, Georgia 31708. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–8714) becomes effective on December 3, 1993.

Issued in Kansas City, Missouri, on October 14, 1993.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–25729 Filed 10–19–93; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–CE–30–AD; Amendment 39–8713; AD 93–20–05]

Airworthiness Directives: Ayres Corporation S2R Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Ayres Corporation (Ayres) S2R series airplanes. This action requires inspecting the bracket that attaches the vertical tail front spar to the horizontal stabilizer (vertical tail attachment bracket) for damage (cracks, broken lugs or bolts, or elongated holes) and immediately replacing any damaged vertical tail attachment bracket with a new bracket of improved design, or, if the bracket is not damaged, replacing it within a certain amount of airplane usage. Reports of broken lugs or bolts on the vertical tail attachment bracket on four of the affected airplanes prompted this action. The actions specified by this AD are intended to prevent structural damage to the vertical tail caused by a damaged vertical tail attachment bracket, which could result in loss of control of the airplane.

DATES: Effective December 3, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 1993.

ADDRESSES: Service information that applies to this AD may be obtained from the Ayres Corporation, P.O. Box 3090, Albany, Georgia 31708; Telephone (912) 883–1440. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Lorenzen, Aerospace Engineer, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–2910; Facsimile (316) 991–3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain Ayres S2R series airplanes was published in the **Federal Register** on June 25, 1993 (58 FR 34383). The action proposed to require inspecting the bracket that attaches the vertical tail front spar to the horizontal stabilizer (vertical tail attachment bracket) for damage (cracks, broken lugs or bolts, or elongated holes) and immediately replacing any damaged vertical tail attachment bracket with a new bracket of improved design, or, if the bracket is not damaged, replacing it within a certain amount of airplane usage. The proposed actions would be accomplished in accordance with the ACCOMPLISHMENT INSTRUCTIONS

section of Ayres Service Bulletin No. SB–AG–32, dated February 12, 1993.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 1,733 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 18 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $140 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,958,290. These figures take into account that none of the affected airplane operators have accomplished the required actions.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

93–20–05 Ayres Corporation: Amendment 39–8713; Docket No. 93–CE–30–AD.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial Nos.
S2R	5000 through 5099, 1380R, and 1416R through 2583R.
S2R–R1340 .	R1340–001 through R1340–030 (with or without DC suffix).
S2R–R3S	R3S–001 through R3S–011 (with or without DC suffix).
S2R–R1820 .	R1820–001 through R1820–035 (with or without DC suffix).
S2R–T11	T11–001 through T11–005 (with or without DC suffix).
S2R–T15	T15–001 through T15–029 (with or without DC suffix); and T27–001 through T27–029 and T–27–031 (with or without DC suffix).
S2R–T34	6000 through 6049, T34–001 through T34–180, T34–190, T34–191 and T34–192 (with or without DC suffix); T36–001 through T36–180 (with or without DC suffix); and T41–001 through T41–180 (with or without DC suffix).
S2R–T45	T45–001 through T45–003 (with or without DC suffix).
S2R–T65	T65–001 (with or without DC suffix).
S2R–HG–T65	T65–002 through T65–010 (with or without DC suffix).
S2RG6	G6–101 through G6–112.
S2R–G10	G10–101.

Compliance: Required as indicated, unless already accomplished.

Note 1: The compliance times specified in this AD take precedence over those referenced in Ayres Service Bulletin (SB) No. SB–AG–32, dated February 12, 1993.

To prevent structural damage to the vertical tail caused by a damaged vertical tail attachment bracket, which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 50 hours time-in-service after the effective date of this AD, inspect the bracket that attaches the vertical tail front spar to the horizontal stabilizer for damage (cracks, broken lugs or bolts, or elongated holes) in accordance with the ACCOMPLISHMENT INSTRUCTIONS: I. Inspection, section of Ayres SB No. SB–AG–32, dated February 12, 1993.

(b) If any damage is found to the bracket during the inspection specified in paragraph (a) of this AD, prior to further flight, replace the bracket with an aluminum bracket, part number (P/N) 40301T007, and install a new close out plate, P/N 40309T003, in accordance with the ACCOMPLISHMENT INSTRUCTIONS: II. Repair, section of Ayres SB No. SB–AG–32, dated February 12, 1993.

(c) Within the next 100 hours TIS after the effective date of this AD, unless already accomplished in accordance with paragraph (b) of this AD, replace the bracket with an aluminum bracket, part number (P/N) 40301T007, and install a new close out plate, P/N 40309T003, in accordance with the ACCOMPLISHMENT INSTRUCTIONS: II. Repair, section of Ayres SB No. SB–AG–32, dated February 12, 1993.

(d) The replacement required by paragraph (c) of this AD may be accomplished instead of the inspection specified in paragraph (a) of this AD provided it is accomplished at or prior to the 50-hour TIS compliance time.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(g) The inspection and replacement required by this AD shall be done in accordance with Ayres Service Bulletin No. SB–AG–32, dated February 12, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the Ayres Corporation, P.O. Box 3090, Albany, Georgia 31708. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment (39–8713) becomes effective on December 3, 1993.

Issued in Kansas City, Missouri, on October 14, 1993.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-25728 Filed 10-19-93; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 90-ANE-20; Amendment 39-8650; AD 93-15-04]

Airworthiness Directives; Pratt and Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt and Whitney (PW) JT9D series turbofan engines, that requires modification of certain fuel nozzles, from a two piece knife-edge seal design to a one piece welded configuration. This amendment is prompted by fuel nozzle failures that resulted in uncontained engine failures. The actions specified by this AD are intended to prevent fuel nozzle distress, which could result in an uncontained lenticular seal failure, and inflight engine shutdown.

DATES: Effective November 19, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 19, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt and Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 90-ANE-20, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Daniel Kerman, Aerospace Engineer, Engine Certification Branch, ANE-141, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, telephone (617) 238-7130; fax (617) 238-7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Pratt and Whitney (PW) JT9D series turbofan engines was published in the **Federal Register** on December 7, 1990 (55 FR 50565). That action proposed to require modification of certain fuel nozzles, in accordance with the PW Service Bulletin (SB) 5566, Revision 4, dated June 23, 1988.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

One commenter requests the compliance end date be extended to December 31, 1994, from December 31, 1991. This change would allow operators to accomplish the requirements of the AD during regularly scheduled maintenance, without disrupting service, and avoid special scheduling for the modifications. The FAA agrees with extending the compliance end date to June 30, 1994.

The economic impact analysis paragraph, as specified in the notice, has been changed to show the increase in the average labor rate from $40 to $55 dollars per work hour. Therefore, the estimated total cost impact has been changed to reflect this increase.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously.

There are approximately 586 engines of the affected design in the worldwide fleet. The FAA estimates that 120 engines of U.S. registry will be affected by this AD, that it will take approximately 91.5 work hours per engine to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $603,900.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-15-04 Pratt and Whitney: Amendment 39-8650. Docket No. 90-ANE-20.

Applicability: Pratt and Whitney (PW) JT9D-59A, -70A, -7Q, and -7Q3 turbofan engines installed on, but not limited to, Boeing 747, Airbus A300, and McDonnell Douglas DC10 aircraft.

Compliance: Required prior to June 30, 1994, unless accomplished previously.

To prevent fuel nozzle distress which can result in an uncontained lenticular seal failure, and an inflight engine shutdown, accomplish the following:

(a) Modify the fuel nozzle and support assembly, Part Numbers 795094, 5004189-01, 795090, and 5003981-01, in accordance with Part 1 and Part 2 of the Accomplishment Instructions, contained in PW Service Bulletin (SB) No. 5566, Revision 4, dated June 23, 1988.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) Special flight permits may be issued, in accordance with FAR 21.197 and 21.199, to

operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modifications for the fuel nozzle and support assembly shall be done in accordance with the following Pratt & Whitney service bulletin:

PRATT & WHITNEY—SERVICE BULLETIN NO. 5566

Page No.	Revision No.	Date
1	4	June 23, 1988.
2	2	December 10, 1986.
3	3	December 10, 1987.
4	4	June 23, 1988.
5	2	December 10, 1986.
6 and 7	3	December 10, 1987.
8 through 12	2	December 10, 1986.
13 through 15	3	December 10, 1987.
16 through 21	2	December 10, 1986.
22	4	June 23, 1988.

This incorporation by reference was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt and Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 19, 1993.

Issued in Burlington, Massachusetts, on September 8, 1993.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–25682 Filed 10–19–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM86–2–000]

Update of the Federal Energy Regulatory Commission's Fees Schedule for Annual Charges for the Use of Government Lands

Issued October 14, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; update of Federal land use fees.

SUMMARY: On May 8, 1987, the Commission issued its final rule (Order No. 469, 52 FR 18201, May 14, 1987) revising the billing procedures for annual charges for administering part I of the Federal Power Act, the billing procedures for charges for Federal dam and land use, and the methodology for assessing Federal land use charges.

In accordance with the Commission's regulations, the Commission by its designee, the Executive Director, is updating its schedule of fees for the use of government lands. The yearly update is determined by adapting the most recent schedule of fees for the use of linear rights-of-way prepared by the United States Forest Service. Since the next fiscal year will cover the period from October 1, 1993, through September 30, 1994, the fees in this notice will become effective October 1, 1993. The fees will apply to fiscal year 1994 annual charges for the use of government lands.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Diane E. Bernier, Financial Services Division, Office of the Executive Director and Chief Financial Officer, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 219–2886.

SUPPLEMENTARY INFORMATION: In accordance with § 11.2, 18 CFR, the land values included in this document will be published in the **Federal Register.** In addition, the Commission provides all interested persons an opportunity to inspect or copy contents of this document during normal business hours in room 3104 at the Commission's Headquarters, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

Christie McGue,

Executive Director and Chief Financial Officer.

Accordingly, the Commission, effective October 1, 1993, amends part 11 of chapter I, title 18 of the Code of Federal Regulations as set forth below.

1. The authority citation for part 11 continues to read as follows:

Authority: 16 U.S.C. 791A–825r; 42 U.S.C. 7101–7352.

2. In part 11, appendix A is revised to read as follows:

APPENDIX A TO PART II

[Fee Schedule for Fiscal Year 1994]

State	County	Rate per acre
Alabama	All counties	$22.63
Arkansas	All counties	16.97
Arizona	Apache, Cochise, Gila, Graham, La Paz, Mohave, Navajo, Pima, Yavapai, Yuma, Coconino North of Colorado River.	5.65
	Coconino South of Colorado River, Greenlee, Maricopa, Pinal Santa Cruz	22.63
California	Imperial, Inyo, Lassen, Modoc, Riverside, San Bernardino	11.31
	Siskiyou	16.97
	Ameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kern, Kings, Lake, Madera, Mariposa, Mendocino, Merced, Mono, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Joaquin, Santa Clara, Shasta, Sierra, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, Yuba.	28.28

APPENDIX A TO PART II—Continued

[Fee Schedule for Fiscal Year 1994]

State	County	Rate per acre
	Los Angeles, Marin, Monterey, Orange, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Cruz, Ventura.	33.95
Colorado	Adams, Arapahoe, Bent, Cheyenne, Crowley, Elbert, El Paso, Huerfano, Kiowa, Kit Carson, Lincoln, Logan, Moffat, Montezuma, Morgan, Pueblo, Sedgwick, Washington, Weld, Yuma.	5.65
	Baca, Dolores, Garfield, Las Animas, Mesa, Montrose, Otero, Prowers, Rio Blanco, Routt, San Miguel	11.31
	Alamosa, Archuleta, Boulder, Chaffee, Clear Creek, Conejos, Costilla, Custer, Denver, Delta, Douglas, Eagle, Fremont, Gilpin, Grand, Gunnison, Hinsdale, Jackson, Jefferson, Lake, La Plata, Larimer, Mineral, Ouray, Park, Pitkin, Rio Grande, Saguache, San Juan, Summit, Teller.	22.63
Connectic	All counties	5.65
Florida	Baker, Bay, Bradford, Calhoun, Clay, Columbia, Dixie, Duval, Escambia, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Leon, Liberty, Madison, Nassau, Okaloossa, Santa Rosa, Suwannee, Taylor, Union, Wakulla, Walton, Washington.	33.95
	All other counties	56.58
Georgia	All counties	33.95
Idaho	Cassia, Gooding, Jerome, Lincoln, Minidoka, Oneida, Owyhee, Power, Twin Falls	5.65
	Ada, Adams, Bannock, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Canyon Caribou, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis, Madison, Nez Perce, Payette, Shoshone, Teton, Valley, Washington.	16.97
Kansas	All other counties	5.65
	Morton	11.31
Illinois	All counties	16.97
Indiana	All counties	28.28
Kentucky	All counties	16.97
Louisiana	All counties	33.95
Maine	All counties	16.97
Michigan	Alger, Baraga, Chippewa, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, Schoolcraft.	16.97
	All other counties	22.63
Minnesota	All counties	16.97
Mississippi	All counties	22.63
Missouri	All counties	16.97
Montana	Big Horn, Blaine, Carter, Cascade, Chouteau, Custer, Daniels, McCone, Meagher, Dawson, Fallon, Fergus, Garfield, Glacier, Golden Valley, Hill, Judith Basin, Liberty, Musselshell, Petroleum, Phillips, Pondera, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Teton, Toole, Treasure, Valley, Wheatland, Wibaux, Yellowstone.	5.65
	Beaverhead, Broadwater, Carbon, Deer Lodge, Flathead, Gallatin, Granite, Jefferson, Lake, Lewis & Clark, Lincoln, Madison, Mineral, Missoula, Park, Powell, Ravalli, Sanders, Silver Bow, Stillwater, Sweet Grass.	16.97
Nebraska	All counties	5.65
Nevada	Churchill, Clark, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Nye, Pershing, Washoe, White Pine.	2.83
	Carson City, Douglas, Storey	28.28
New Hampshire	All counties	16.97
New Mexico	Chaves, Curry, De Baca, Dona Ana, Eddy, Grant, Guadelupe, Harding, Hidalgo, Lea, Luna, McKinley, Otero, Quay, Roosevelt, San Juan, Socorro, Torrance.	5.65
	Rio Arriba, Sandoual, Union	11.31
	Bernalillo, Catron, Cibola, Colfax, Lincoln, Los Alamos, Mora, San Miguel, Santa Fe, Sierra, Taos, Valencia.	22.63
New York	All counties	22.63
North Carolina	All counties	33.95
North Dakota	All counties	5.65
Ohio	All counties	22.63
Oklahoma	All other counties	5.65
	Beaver, Cimarron, Roger Mills, Texas	11.31
	Le Flore, McCurtain	16.97
Oregon	Harney, Lake, Malheur	5.65
	Baker, Crook, Deschutes, Gilliam, Grant, Jefferson, Klamath, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, Wheeler.	11.31
	Coos, Curry, Douglas, Jackson, Josephine	16.97
	Benton, Clackamas, Clatsop, Columbia, Hood River, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamock, Washington, Yamhill.	22.63
Pennsylvania	All counties	22.63
Puerto Rico	All	33.95
South Dakota	Butte, Custer, Fall River, Lawrence, Mead, Pennington	16.97
	All other counties	5.65
South Carolina	All counties	33.95
Tennessee	All counties	22.63
Texas	Culberson, El Paso, Hudspeth	5.65
	All other counties	33.95

APPENDIX A TO PART II—Continued

[Fee Schedule for Fiscal Year 1994]

State	County	Rate per acre
Utah	Beaver, Box Elder, Carbon, Duchesne, Emery, Garfield, Grand, Iron, Jaub, Kane, Millard, San Juan, Tooele, Uintah, Wayne.	5.65
	Washington	11.31
	Cache, Daggett, Davis, Morgan, Piute, Rich, Salt Lake, Sanpete, Sevier, Summit, Utah, Wasatch, Weber	16.97
Vermont	All counties	22.63
Virginia	All counties	22.63
Washington	Adams, Asotin, Benton, Chelan, Columbia, Douglas, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanagan, Spokane, Walla Walla, Whitman, Yakima.	11.31
	Ferry, Pend Oreille, Stevens	16.97
	Callam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, Whatcom.	22.63
West Virginia	All counties	22.63
Wisconsin	All counties	16.97
Wyoming	Albany, Campbell, Cargon, Converse, Goshen, Hot Springs, Johnson, Laramie, Lincoln, Natrona, Niobrara, Platte, Sheridan, Sweetwater, Fremont, Sublete, Uinta, Washakie.	5.65
	Big Horn, Crook, Park, Teton, Weston	16.97
All other zones		5.31

[FR Doc. 93-25703 Filed 10-19-93; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8493]

RIN 1545-AR71

Hedging Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations clarifying the character of gain or loss from business hedges. The temporary regulations address questions that have arisen as a result of the decision of the United States Supreme Court in *Arkansas Best*. The temporary regulations provide guidance to taxpayers entering into hedging transactions and serve as a basis for resolving pending cases involving gains and losses from hedging. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

DATES: These temporary regulations are effective October 20, 1993.

For dates of applicability of these temporary regulations, see the discussion in the "Dates of Applicability" paragraph in the "SUPPLEMENTARY INFORMATION" portion of the preamble.

FOR FURTHER INFORMATION CONTACT: Jo Lynn Ricks of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC 20224 (Attn: CC:DOM:FI&P). Telephone 202-622-3920 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1403. The estimated annual burden per recordkeeper varies from .10 to 10.00 hours, depending on individual circumstances, with an estimated average of .50 hour.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require greater or less time, depending on their particular circumstances.

For further information concerning this collection of information, and where to submit comments on this collection of information, the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the Federal Register.

Background

This document contains temporary regulations amending the Income Tax Regulations (26 CFR part 1) under section 1221 of the Internal Revenue Code (Code) (relating to the definition of capital asset). The provisions affected relate to the determination of the character of gain or loss from hedging transactions. The tax treatment of the gain or loss generally depends upon whether property used as a hedge is characterized as a capital asset.

In *Arkansas Best Corp.* v. *Commissioner*, 485 U.S. 212 (1988) (*Arkansas Best*), the Supreme Court held that the taxpayer realized a capital loss on a sale of stock even though the stock was purchased with a business motive rather than an investment motive. In so holding, the Court rejected the business motive test (the *Corn Products* doctrine) that had developed following the Court's decision in *Corn Products Refining Co.* v. *Commissioner*, 350 U.S. 46 (1955) (*Corn Products*). The Court reaffirmed its holding in *Corn Products* on the grounds that the futures contracts at issue in that case came within the inventory exception of section 1221(1) of the Code.

Arkansas Best has caused uncertainty with respect to the tax treatment of business hedging generally. Prior to *Corn Products*, it had been widely recognized that gain or loss realized on a hedge of a non-capital asset was treated as ordinary income or loss. After *Corn Products*, however, virtually all hedging transactions were thought to be within the business motive test of the

Corn Products doctrine. Thus, there was little new authority on the subject of hedging during the 30 years preceding the *Arkansas Best* decision.

Arkansas Best itself did not involve a business hedging transaction, and the Court did not directly address the tax treatment of hedging. Nonetheless, based on the Court's narrow interpretation of its earlier decision in *Corn Products*, the Service, in individual cases, has treated various types of business hedging transactions as giving rise to capital gain or loss. Issues with respect to business hedging are present in many cases at an administrative level, and several cases involving these issues are pending in the courts.

In *Federal National Mortgage Association* v. *Commissioner*, 100 T.C. No. 36 (June 17, 1993) (*FNMA*), the Tax Court rejected the Service's position and held that the taxpayer's business hedges gave rise to ordinary gain or loss. In that case, the taxpayer used short positions in futures contracts, put options, and short sales of Treasury securities to hedge the spread between the rate of interest on mortgages that it held or had committed to buy and the rate of interest on indebtedness to be incurred to carry the mortgages. The court found that the mortgages were not capital assets and that the hedges were so integrally related to the mortgages that they also were entitled to ordinary treatment. The court cited with favor the pre-*Corn Products* cases involving business hedges and expressed a willingness to extend ordinary treatment to "short" hedges as well as "long" hedges and to liability hedges as well as asset hedges.

Although the Service may disagree with some aspects of the FNMA opinion, the court clearly found *Arkansas Best* not to be an impediment to treating gains and losses on business hedging transactions as ordinary rather than capital.

The result reached by the court avoids the character mismatches that result from treating business hedges as capital. Moreover, it comports with substantial evidence that Congress has long assumed that business hedges give rise to ordinary gain or loss. The legislative history of the 1954 Code, for example, expressly notes that hedges were ordinary under then-current law and that Congress intended to continue that treatment. H.R. Rep. No. 1337, 83d Cong., 2d Sess. A278 (1954). In addition, a number of statutory provisions that provide special treatment to taxpayers that engage in hedging transactions are premised on Congress' understanding that business hedges receive ordinary treatment. See, e.g., sections 1256(e), 1092(e), 263(g)(3), and 1233(g) of the Code.

In light of the above, the Service has decided to abandon the position it has taken with respect to the character of many common business hedges and to resolve that issue with these regulations. Cases pending at the administrative level and in the courts will be disposed of in a manner consistent with the regulations. On a prospective basis, the regulations provide an identification and record-keeping requirement that is necessary for the Service to locate and evaluate transactions that taxpayers believe should qualify for hedge treatment.

Need for Temporary Regulations

Immediate guidance is needed with respect to gains and losses on business hedging transactions. This Treasury decision will enable Service personnel to resolve in a fair and consistent manner the many cases pending either at the administrative level or in the courts. Moreover, the clarification is needed because the uncertainty caused by *Arkansas Best* regarding the tax treatment of business hedges may be influencing business decisions as to whether and how to hedge business risks. Therefore, good cause is found to dispense with the public notice requirement of 5 U.S.C. 553(b) and the delayed effective date requirement of 5 U.S.C. 553(d).

Explanation of Provisions

Paragraph (a)(1) of § 1.1221–2T provides that property that is part of a hedging transaction, as defined in the regulations, is not a capital asset. This rule is effective for all open years.

Paragraph (a)(2) of § 1.1221–2T provides a similar rule for short sales and options. Where a short sale or option is part of a hedging transaction, as defined, any gain or loss on the short sale or option is ordinary. Although the character of gain or loss on a short sale or option generally is determined under sections 1233 and 1234 rather than section 1221, the rule for short sales and options has been included here to provide a unified set of rules for determining the character of gain or loss on hedging transactions. New temporary regulations under sections 1233 and 1234 provide that § 1.1221–2T governs the character of gain or loss on short sales and options that are part of hedging transactions.

Under paragraph (a)(3) of § 1.1221–2T, the fact that property, a short sale, or an option serves a hedging function makes gain or loss on the property, short sale, or option ordinary only if the property, short sale, or option is part of a hedging transaction as defined in the regulations. For example, if a transaction falls outside the regulations, gain or loss from the transaction is not made ordinary by the fact that property is a "surrogate" for a non-capital asset or that the transaction serves as "insurance" against a business risk.

Paragraph (a)(4) of § 1.1221–2T describes the relationship between § 1.1221–2T and certain other sections. Section 988 transactions are excluded from these regulations because gain or loss on those transactions is ordinary under section 988(a)(1). The regulations do apply, however, to transactions that predate the effective date of section 988. Paragraph (a)(4) of § 1.1221–2T also makes clear that the definition of a hedging transaction under § 1.1221–2T(b) does not apply for purposes of certain hedging exceptions to the subpart F rules of section 954 and certain hedge identification rules in the interest allocation regulations under section 864(e).

In defining the term hedging transaction, paragraph (b)(1) of § 1.1221–2T adopts the concept of hedging in section 1256(e)(2)(A) of the Code. A hedging transaction generally is a transaction that a taxpayer enters into in the normal course of the taxpayer's business primarily to reduce the risk of interest rate or price changes or currency fluctuations. Thus, the regulations do not provide ordinary treatment for gain or loss from the disposition of stock where, for example, the stock was acquired to protect the goodwill or business reputation of the acquirer or to ensure the availability of goods.

The definition of a hedging transaction covers most, but not all, common business hedges. For example, the regulations do not apply where a taxpayer hedges a dividend stream, the overall profitability of a business unit, or other business risks that do not relate directly to interest rate or price changes or currency fluctuations. Moreover, because a hedging transaction must reduce the taxpayer's risk, the regulation does not apply where a taxpayer hedges the risk of a related party. The Service welcomes comments on the scope of the definition and on the treatment of transactions between related parties.

A second element of the definition of a hedging transaction is that the risk being reduced must relate to ordinary property or obligations or to the taxpayer's borrowings. Paragraph (b)(2) of § 1.1221–2T defines the terms ordinary property and ordinary obligations. Property is ordinary

property if a sale or exchange of the property could never produce capital gain or loss. An obligation is an ordinary obligation if performing or terminating the obligation could never produce capital gain or loss. For example, a taxpayer's obligation with respect to a short sale of a capital asset is not an ordinary obligation.

Hedges of property within the exceptions to section 1221 and property that produces ordinary gain or loss under, for example, section 582(c) generally come within the definition of the term "hedging transaction." The Service believes that it is inappropriate, however, to have a loss on a hedge treated as ordinary when gain on the item or items being hedged could be treated as capital gain. Thus, a hedge of a section 1231 asset or a hedge of the ordinary income produced by a capital asset is excluded from the definition. Hedges of non-inventory supplies are also excluded because they are capital assets, notwithstanding the fact that they give rise to ordinary deductions when they are consumed in the taxpayer's business.

Paragraph (b)(3) of § 1.1221–2T clarifies that a transaction that hedges an aggregate risk qualifies for ordinary treatment under the regulations only if all of the risk, or all but a de minimis amount of the risk, being hedged is related to ordinary property and liabilities. Thus, a bank could hedge the aggregate interest rate exposure on a large pool of its assets and treat any gain or loss from the hedge as ordinary gain or loss, even if a de minimis amount of the aggregate interest rate risk is related to capital assets. All of the risk being hedged, however, must be interest rate, price, or currency risk. Thus, the regulations do not permit ordinary treatment where a taxpayer hedges the overall profitability of one or more business units.

Paragraphs (c)(1) and (c)(3) of § 1.1221–2T impose a same-day identification and record-keeping requirement with respect to hedging transactions entered into on or after January 1, 1994. In the case of transactions that were entered into before January 1, 1994, and that remain in existence on March 31, 1994, the same requirement applies except that the identification may be made until March 31, 1994. These requirements, authorized by sections 6001 and 7805, are designed to aid the Internal Revenue Service in administering the law and to prevent manipulation, such as recharacterization of transactions in view of later developments. In all cases, a taxpayer must identify a hedging transaction unambiguously. The identification is to be made on, and retained as part of, the taxpayer's books and records and must specify both the hedging position and the item, items, or aggregate risk that is being hedged.

The Service is considering what requirements should be met in order for an identification to satisfy § 1.1221–2T(c). The proposed regulations that cross reference the text of this Treasury decision also contain proposed special identification requirements for specific types of hedging transactions. An additional matter to be decided is what transaction-by-transaction records are required. For example, some taxpayers today make identifications for purposes of section 1256(e) by checking a workpaper box that refers explicitly to that statutory provision. The Service solicits comments on this point and on how a taxpayer should identify a global or other aggregate hedge. Pending more specific guidance, the Service will accept any reasonable method of identifying the item, items, or aggregate risk being hedged.

The taxpayer's identification of a transaction as a hedging transaction is binding on the taxpayer. Thus, a taxpayer who identifies a transaction as a hedging transaction must treat any gain from the transaction as ordinary gain, even if the transaction does not meet the definition of a hedging transaction. Misidentifying a nonhedging transaction as a hedge, however, does not transform a capital loss from the transaction into an ordinary loss. A taxpayer may not use the identification procedure to obtain a benefit to which the taxpayer is not entitled under the substantive rule. This rule is similar to the rule in section 1256(f)(1) of the Code.

Similarly, the absence of identification generally is binding on a taxpayer and establishes that a transaction is not a hedging transaction. A taxpayer who does not identify a transaction may not claim the benefit of the regulations and must treat a loss from the transaction as a capital loss unless ordinary loss treatment is available without reference to whether the transaction serves a hedging function. An exception to this rule is provided where the taxpayer can show that the transaction in question was a hedging transaction and that the failure to identify the transaction was due to inadvertent error. Finally, if a hedging transaction was not identified and the taxpayer had no reasonable basis for treating the transaction as other than a hedging transaction, gain from the transaction is ordinary.

Dates of Applicability

These temporary regulations generally apply to all open taxable years. The identification requirements of paragraphs (c)(1) and (c)(3) of § 1.1221–2T apply to transactions entered into on or after January 1, 1994, and to transactions that were entered into before January 1, 1994, and that remain in existence on March 31, 1994.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Jo Lynn Ricks, Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of amendments to the regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

Paragraph 1. The authority citation for part 1 is amended by adding a citation in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1221–2T also issued under 26 U.S.C. 6001. * * *.

Par. 2. Section 1.1221–2T is added to read as follows:

§ 1.1221–2T Hedging transactions (temporary).

(a) *Treatment of hedging transactions*—(1) *In general.* This section governs the treatment of hedging transactions under section 1221. Except as provided in paragraph (d)(2) of this

section (and notwithstanding the provisions of § 1.1221–1(a)), the term capital asset does not include property that is part of a hedging transaction defined in paragraph (b) of this section.

(2) *Short sales and options.* This section also governs the character of gain or loss from a short sale or option that is part of a hedging transaction. See §§ 1.1233–2T and 1.1234–4T. Except as provided in paragraph (d)(2) of this section, gain or loss on a short sale or option that is part of a hedging transaction defined in paragraph (b) of this section is ordinary income or loss.

(3) *Exclusivity.* Gain or loss on property, a short sale, or an option is ordinary on the grounds that the property, short sale, or option serves a hedging function only if the property, short sale, or option is part of a hedging transaction as defined in paragraph (b) of this section.

(4) *Coordination with other sections*—(i) *Section 988.* This section does not apply to gain or loss realized on a section 988 transaction as defined in section 988(c)(1) or to any qualified fund as defined in section 988(c)(1)(E)(iii). This section does apply, however, to transactions or payments that would be subject to section 988 but for the date that the transactions were entered into or the date that the payments were made.

(ii) *Sections 954(c) and 864(e).* The definition of a hedging transaction in paragraph (b) of this section does not apply for purposes of section 954(c)(1)(C), section 954(c)(1)(D), and § 1.861–9T(b)(6)(iv)(C).

(b) *Hedging transaction*—(1) *In general.* A hedging transaction is a transaction that a taxpayer enters into in the normal course of the taxpayer's trade or business primarily—

(i) To reduce risk of price changes or currency fluctuations with respect to ordinary property (as defined in paragraph (b)(2) of this section) that is held or to be held by the taxpayer; or

(ii) To reduce risk of interest rate or price changes or currency fluctuations with respect to borrowings made or to be made, or ordinary obligations incurred or to be incurred, by the taxpayer.

(2) *Ordinary property and obligations.* Property is ordinary property if a sale or exchange of the property by the taxpayer could not produce capital gain or loss regardless of the taxpayer's holding period when the sale or exchange occurs. Thus, for example, property used in the trade or business within the meaning of section 1231(b) (determined without regard to the holding period specified in that section) is not ordinary property. An obligation is an ordinary obligation if performance or termination of the obligation by the taxpayer could not produce capital gain or loss.

(3) *Hedging an aggregate risk.* The term hedging transaction includes a transaction that reduces an aggregate risk of interest rate changes, price changes, and/or currency fluctuations only if all of the risk, or all but a de minimis amount of the risk, is with respect to ordinary property, ordinary obligations, and borrowings.

(c) *Identification and record-keeping requirements*—(1) *In general.* A taxpayer that enters into a hedging transaction must identify the transaction as a hedging transaction before the close of the day on which the taxpayer enters into the transaction. The identification must be made on, and retained as part of, the taxpayer's books and records and must specify both the hedging transaction and the item, items, or aggregate risk that is being hedged.

(2) *Additional identification requirements for certain hedging transactions.* [Reserved]

(3) *Presence or absence of identification must be unambiguous.* The presence or absence of an identification for purposes of this paragraph (c) must be unambiguous. The identification of a hedging transaction for financial accounting or regulatory purposes does not satisfy this requirement unless the taxpayer's books and records indicate that the identification is also being made for tax purposes. The taxpayer may indicate that individual hedging transactions, or a class or classes of hedging transactions, that are identified for financial accounting or regulatory purposes are also being identified as hedging transactions for purposes of this section.

(4) *Consistency with section 1256(e)(2)(C).* [Reserved]

(5) *Effective date*—(i) *In general.* Paragraphs (c)(1) and (c)(3) of this section apply to transactions that—

(A) Are entered into on or after January 1, 1994, or

(B) Are entered into before that date and remain in existence on March 31, 1994.

(ii) *Special rule for paragraphs (c)(2) and (c)(4).* [Reserved]

(6) *Transition rule.* In the case of hedging transactions described in paragraph (c)(5)(i)(B) of this section, an identification is timely if it is made before the close of business on March 31, 1994.

(d) *Effect of identification and non-identification*—(1) *Transactions identified.* If the taxpayer identifies a transaction as a hedging transaction for purposes of paragraph (c) of this section, the identification is binding with respect to gain, whether or not all of the requirements of that paragraph are satisfied. Thus, gain from that transaction is ordinary income. If the transaction is not in fact a hedging transaction described in paragraph (b) of this section, however, paragraphs (a)(1) and (a)(2) of this section do not apply and the character of loss is determined without reference to whether the transaction serves a hedging function. Thus, the taxpayer's identification of the transaction as a hedging transaction does not itself make loss from the transaction ordinary.

(2) *Transactions not identified*—(i) *In general.* Except as provided in paragraphs (d)(2)(ii) and (d)(2)(iii) of this section, the absence of an identification that satisfies the requirements of paragraph (c) of this section is binding and establishes that a transaction is not a hedging transaction. Thus, subject to the exceptions, the rules of paragraphs (a)(1) and (a)(2) of this section do not apply and the character of gain or loss is determined without reference to whether the transaction serves a hedging function.

(ii) *Inadvertent error.* If a taxpayer does not make an identification that satisfies the requirements of paragraph (c) of this section, the taxpayer may treat gain or loss from the transaction as ordinary income or loss under paragraph (a)(1) or (a)(2) of this section only if—

(A) The transaction is a hedging transaction (as defined in paragraph (b) of this section);

(B) The failure to identify the transaction was due to inadvertent error; and

(C) All of the taxpayer's hedging transactions in all open years are being treated on either original or, if necessary, amended returns as provided in paragraphs (a)(1) and (a)(2) of this section.

(iii) *Anti-abuse rule.* If a taxpayer does not make an identification that satisfies the requirements of paragraph (c) of this section, but the taxpayer has no reasonable basis for treating the transaction as other than a hedging transaction, gain from the transaction is ordinary. Thus, a taxpayer may not elect to treat gain or loss from a hedging transaction as capital gain or loss. The reasonableness of the taxpayer's failure to identify a transaction is determined by taking into consideration not only the requirements of paragraph (b) of this section, but also the taxpayer's treatment of the transaction for financial accounting or other purposes and the

taxpayer's identification of similar transactions as hedging transactions.

Par. 3. Section 1.1233–2T is added to read as follows:

§ 1.1233–2T Hedging transactions (temporary).

The character of gain or loss on a short sale that is part of a hedging transaction is determined under the rules of § 1.1221–2T.

Par. 4. Section 1.1234–4T is added to read as follows:

§ 1.1234–4T Hedging transactions (temporary).

The character of gain or loss on an acquired or a written option that is part of a hedging transaction is determined under the rules of § 1.1221–2T.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. Section 602.101(c) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
• • • • •	
1.1221–2T(c)	1545–1403
• • • • •	

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: October 6, 1993.

Samuel Y. Sessions,
Acting Assistant Secretary of the Treasury.

[FR Doc. 93–25779 Filed 10–18–93; 10:00 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ND–5–1–5869; FRL–4784–4]

Approval and Promulgation of Air Quality Implementation Plans; North Dakota; Revision to the State Implementation Plan Correcting Sulfur Dioxide Enforceability Deficiencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves a revision to the North Dakota State Implementation Plan (SIP) to include revisions to North Dakota Air Pollution Control Rules, Chapter 33–15–06 of the North Dakota Administrative Code, entitled *Emissions of Sulfur Compounds Restricted.* These revisions correct enforceability deficiencies and strengthen the provisions of Chapter 33–15–06. The revisions were submitted by the Governor to the EPA by cover letter dated June 24, 1992.

EFFECTIVE DATES: This action will become effective on December 20, 1993, unless notice is received by November 19, 1993, that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to Meredith A. Bond, 8ART-AP, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405. Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following offices: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado; and Division of Environmental Engineering, North Dakota Department of Health and Consolidated Laboratories, 1200 Missouri Avenue, Bismarck, North Dakota 58502–5520.

FOR FURTHER INFORMATION CONTACT: Meredith Bond at (303) 293–1764.

SUPPLEMENTARY INFORMATION: A nationwide effort is being undertaken to have sulfur dioxide (SO_2) enforceability deficiencies identified and corrected in SIPs before operating permit programs become effective. Because the operating permit programs will initially incorporate underlying SIP requirements, it is important that the underlying SIP is enforceable so that permits themselves will be enforceable. EPA, Region VIII, provided a list of deficiencies in Chapter 33–15–06 to the State of North Dakota by cover letter dated March 8, 1991. The Region used the "SO_2 SIP Enforceability Checklist" when reviewing Chapter 33–15–06 for enforceability deficiencies. This checklist, developed by the EPA, was included as an attachment to the November 28, 1990, memorandum from Robert Bauman and Rich Biondi to the Air Branch Chiefs. The November 28, 1990, memorandum, as well as the March 8, 1991, letter from EPA, Region VIII to Dana Mount, Director of Division of Environmental Engineering, North Dakota State Department of Health and Consolidated Laboratories, are included as attachments to the Technical Support Document. The checklist focused on the following topics:

1. Clarity;
2. Averaging times consistent with protection of the SO_2 National Ambient Air Quality Standards (NAAQS);
3. Clear compliance determinations;
4. Continuous emissions monitoring;
5. Adequate reporting and recordkeeping requirements;
6. Director's discretion issues; and
7. Stack height issues.

The State of North Dakota subsequently adopted revisions to Chapter 33–15–06 in order to correct enforceability deficiencies and submitted the revised regulations to EPA for SIP approval on June 24, 1992. This submittal also contained revisions to the State's Prevention of Significant Deterioration (PSD), New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPS) rules. In this action, EPA is approving only the revisions to Chapter 33–15–06, Emissions of Sulfur Compounds Restricted. The NSPS and NESHAPS portions, with the exception of the State's asbestos regulations in section 33–15–13–02, were approved in a previous action (58 FR 5294, January 21, 1993). EPA will act on the PSD and asbestos rules in a separate notice.

The revisions to Chapter 33–15–06, discussed in detail in the Technical Support Document, are briefly outlined below.

Analysis of State Submission

1. Procedural Background

The Clean Air Act (Act) requires States to observe certain procedural requirements in developing implementation plans for submission to the EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 100(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 56 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is

deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

The State of North Dakota held a public hearing on October 16, 1991, to entertain public comment on proposed revisions to Chapter 33–15–06 addressing enforceability corrections. Public comments were received and adequately addressed by the State. Following the public hearing and consideration of public comments, the SIP revision was subsequently adopted by the State and became effective on June 1, 1992. The SIP revision was submitted by the Governor to the EPA by cover letter dated June 24, 1992.

The SIP revision was reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991). A letter dated August 27, 1992, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. As noted in today's action, the EPA is approving this North Dakota SIP submittal to correct SO_2 enforceability deficiencies.

2. Review of Revisions to Chapter 33–15–06

The State of North Dakota revised Chapter 33–15–06 in order to correct SO_2 enforceability deficiencies. For a detailed explanation of each change to Chapter 33–15–06 being approved today, please refer to the Technical Support Document. A brief summary of the revisions is presented in the following paragraph.

Revisions to Chapter 33–15–06 include:

1. Clarification as to which sources the chapter applies;

2. Adding language stating that the State shall establish more restrictive emission requirements on sources not complying with or causing exceedance of either ambient air quality standards or prevention of significant deterioration standards;

3. Clarification of averaging periods to ensure protection of 3-hr SO_2 NAAQS;

4. Including appropriate measuring and testing measures;

5. Adding a section providing for continuous emission monitoring requirements; and

6. Adding a section detailing reporting and recordkeeping requirements.

Director's discretion issues were not addressed since EPA guidance is not yet available.

Final Action

The EPA today is approving a revision to the North Dakota SIP to include revisions to the North Dakota Administrative Code, Chapter 33–15–06, entitled *Emissions of Sulfur Compounds Restricted.* These revisions correct enforceability deficiencies and strengthen the provisions of Chapter 33–15–06. The revisions were submitted by the Governor to the EPA by letter dated June 24, 1992.

The EPA has reviewed these revisions to the North Dakota SIP and is approving them as submitted. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective December 20, 1993, unless, by November 19, 1993, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective December 20, 1993.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economical, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Executive Order 12291

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on the EPA's request.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 20, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may by filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur dioxide.

Note: Incorporation by reference of the SIP for the State of North Dakota was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 24, 1993.

Jack W. McGraw,

Acting Regional Administrator.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart JJ—North Dakota

2. Section 52.1820 is amended by adding paragraph (c)(24) to read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

(24) On June 24, 1992, the governor of North Dakota submitted revisions to the plan. The revisions correct enforceability deficiencies in the SO_2 regulations.

(i) Incorporation by reference.

(A) Revisions to the North Dakota Administrative Codes, Chapter 33–15–06, Emissions of Sulfur Compounds Restricted, which became effective June 1, 1992.

[FR Doc. 93–25766 Filed 10–19–93; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Part 180

[PP 6F3342/R2018; FRL–4646–8]

RIN 2070–AB78

Pesticide Tolerance for Cyromazine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the insect growth regulator cyromazine and its metabolite melamine, calculated as cyromazine, in or on peppers at 4.0 parts per million (ppm). This regulation to establish a maximum permissible level for residues of the insecticide was requested pursuant to a petition submitted by Ciba-Geigy Corp.

EFFECTIVE DATE: This regulation becomes effective October 20, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 6F3342/R2018], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2386.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 19, 1986 (51 FR 9511), EPA issued a notice which announced that the Ciba Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted a pesticide petition (PP 6F3342) to EPA proposing to amend 40 CFR 180.414 by establishing a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a, for residues of the insecticide cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) plus its major metabolite melamine (1,3,5-triazine-2,4,6-triamine) in or on the raw agricultural commodity peppers at 2.0 ppm. Further, in the **Federal Register** of March 10, 1993 (58 FR 1326), EPA issued a notice which announced that Ciba-Geigy Corp. had submitted amendments to the petition to raise the proposed tolerance for residues in or on peppers from 2.0 ppm to 4.0 ppm.

There were no comments or requests for referral to an advisory committee received in response to these notices of filing. The scientific data submitted in the petition and other relevant material have been evaluated. A discussion of the toxicological data considered in support of the tolerance as well as a discussion of the risk of cyromazine and its metabolite melamine can be found in a rule (FAP 2H5355/P344) published in the **Federal Register** of April 27, 1984 (49 FR 18120); in the Notice of Conditional Registration for Larvadex 0.3% Premix, published in the **Federal Register** of May 15, 1985 (50 FR 20373); and in the proposed rule regarding the establishment of a tolerance for residues of cyromazine and its metabolite melamine, calculated as cyromazine, in or on mushrooms at 10.0 ppm in the **Federal Register** of June 30, 1993 (58 FR 34972).

A chronic dietary exposure/risk assessment for the proposed use on peppers based on tolerance residue levels of 4.0 ppm was performed. This chronic analysis compared daily exposure estimates to a Reference Dose (RfD) of 0.0075 mg/kg body weight/day based on a no-observable-effects level (NOEL) of 0.75 mg/kg/ body weight/day and an uncertainty factor of 100. The NOEL is based on a 6-month dog feeding study which demonstrated decreased hematocrit and hemoglobin levels. Estimates (in mg/kg body weight/day, and percents of RfD occupied) for the overall (average) U.S. population for currently published tolerances of cyromazine are 0.002075 and 28%. With the inclusion of peppers, these figures become 0.002203 and 30%. Therefore, the contribution of the pepper tolerance takes up an additional 2 percent of the RfD. Since the exposure estimates are based on Theoretical Maximum Residue Contribution, typically an overestimate of actual exposure, and do not exceed the reference dose, the chronic health risk of cyromazine does not appear to be significant.

Based on the data and information cited above, the Agency has determined that the establishment of the tolerance by amending 40 CFR 180.414 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 29, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.414(e) is amended in the table therein by adding and alphabetically inserting the following raw agricultural commodity, to read as follows:

§ 180.414 Cyromazine; tolerances for residues.

* * * * *

(e) * * *

Commodity	Parts per million
* * * * *	
Peppers	4.0

[FR Doc. 93-25639 Filed 10-19-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 271

[FRL-4791-7]

Mississippi; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Mississippi has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Mississippi's revisions consist of the provisions contained in HSWA Cluster II. These requirements are listed in section B of this document. The Environmental Protection Agency (EPA) has reviewed Mississippi's application and has made a decision, subject to public review and comment, that Mississippi's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Mississippi's hazardous waste program revisions. Mississippi's application for program revisions is available for public review and comment.

DATES: Final authorization for Mississippi's program revisions shall be effective December 20, 1993 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Mississippi's program revision application must be received by the close of business, November 19, 1993.

ADDRESSES: Copies of Mississippi's program revision application are available during 8 a.m. to 4:30 p.m. at the following addresses for inspection and copying: Mississippi Department of Environmental Quality, 2380 Highway 80 West, P.O. Box 10385, Jackson, Mississippi 39209, (601) 961-5062; U.S. EPA, Region IV, Library, 345 Courtland Street, NE., Atlanta, Georgia 30365; (404) 347-4216. Written comments should be sent to Leonard W. Nowak at the address listed below.

FOR FURTHER INFORMATION CONTACT: Leonard W. Nowak, Acting Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; (404) 347-2234.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 268 and 270.

B. Mississippi

Mississippi initially received final authorization for its base RCRA program effective on June 27, 1984. Mississippi received authorization for revisions to its program on October 17, 1988, October 9, 1990, May 28, 1991, August 27, 1991, July 10, 1992, and July 7, 1993.

On December 7, 1992, Mississippi submitted a program revision application for additional program approvals. Today, Mississippi is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Mississippi's application and has made an immediate final decision that Mississippi's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Mississippi. The public may submit written comments on EPA's immediate final decision up until November 19, 1993.

Copies of Mississippi's application for these program revisions is available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice. Approval of Mississippi's program revisions shall become effective December 20, 1993, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received EPA will publish either: (1) A withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Mississippi is today seeking authority to administer the following Federal requirements promulgated on July 1, 1987-June 30, 1990, for HSWA II.

Federal requirement	FR reference	FR promulgation date
California List Waste Restrictions	52 FR 25760 ..	7/8/87
	52 FR 41295 ..	10/27/87
Exception Reporting for Small Quantity Generators of Hazardous Waste	52 FR 35894 ..	9/23/87
HSWA Codification Rule Permit Application Requirements Regarding Corrective Action, Permit Modification, Permit as Shield Provision, Permit Conditions to Protect Human Health and the Environment, Post Closure Permits.	52 FR 45788 ..	12/1/87
Identification & Listing of Hazardous Waste; Technical Correction	53 FR 27162 ..	7/19/88
Land Disposal Restrictions for First Third Scheduled Wastes	53 FR 31138 ..	8/17/88
	54 FR 8264	2/27/89
Land Disposal Restrictions Amendments to First Third Scheduled Wastes	54 FR 18836 ..	5/2/89
Land Disposal Restrictions for Second Third Scheduled Wastes	54 FR 26594 ..	6/23/89
Land Disposal Restrictions; Correction to the First Third Scheduled Wastes	54 FR 36967 ..	9/6/89
	55 FR 23935 ..	6/13/90
Reportable Quantity Adjustment Methyl Bromide Production Wastes	54 FR 41402 ..	10/6/89
Reportable Quantity Adjustment	54 FR 50968 ..	12/11/89
Listing of 1,1-Dimethylhydrazine Production Wastes	55 FR 18496 ..	5/2/90
HSWA Codification Rule, Double Liners; Correction	55 FR 19262 ..	5/9/90
Organic Air Emission Standards for Process Vents & Equipment Leaks	55 FR 25454 ..	6/21/90

Mississippi's application for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Mississippi is granted final authorization to operate its hazardous waste program as revised.

Mississippi now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Mississippi also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Mississippi's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 93-25761 Filed 10-19-93; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 403

[BPD-483-F]

RIN 0938-AE32

Medicare Program; Demonstration Project To Develop a Uniform Cost Reporting System for Hospitals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule responds to public comments on the August 25, 1989, interim final rule with comment period that established a demonstration project to develop a uniform cost reporting system for hospitals under the Medicare program. Under that rule, all hospitals in the States of California and Colorado were required to participate in the demonstration project. In addition, since the demonstration project ended on June 29, 1992, this final rule removes the relevant provisions from the Code of Federal Regulations.

EFFECTIVE DATE: This final rule is effective November 19, 1993.

FOR FURTHER INFORMATION CONTACT: David Goldberg (410) 966-4512.

SUPPLEMENTARY INFORMATION:

I. Background

Under Medicare, hospitals are paid for hospital inpatient services they furnish to beneficiaries under Part A (Hospital Insurance). Currently, most hospitals are paid for the operating costs of their hospital inpatient services under the prospective payment system in accordance with section 1886(d) of the Social Security Act (the Act) and 42 CFR part 412. Under this system, Medicare payment is made at a predetermined, specific rate for each hospital discharge based on the information contained on actual bills submitted. Those hospitals and hospital units that are excluded from the prospective payment system generally are paid based on the reasonable cost of services furnished to beneficiaries. The inpatient operating costs of these hospitals and hospital units are subject to the rate-of-increase limits, in accordance with section 1886(b) of the Act and 42 CFR 413.40.

Sections 1815(a) and 1833(e) of the Act provide that no payments will be made to a hospital unless it has furnished the information requested by the Secretary needed to determine the amount of payments due the hospital under the Medicare program. In general, hospitals submit this information through cost reports that cover a 12-month period. Even though most prospective payment hospitals are paid on the basis of actual bills submitted, these hospitals continue to receive payment for certain costs, such as

outpatient costs, on a reasonable cost basis and are required to submit cost reports. Section 1886(f)(1)(A) of the Act provides that the Secretary will maintain a system for reporting costs of hospitals paid under the prospective payment system.

Regulations at § 413.20(a) require that hospitals "maintain sufficient financial records and statistical data for proper determination of costs * * *". In addition, hospitals must use standardized definitions and follow accounting, statistical, and reporting practices that are widely accepted in the hospital and related fields. Under the provisions of §§ 413.20(b) and 413.24(f), hospitals are required to submit cost reports annually, with the reporting period based on the hospital's accounting year (generally a consecutive 12-month period). Section 413.20(d) requires that hospitals furnish to their fiscal intermediary the information necessary to ensure proper payment by Medicare. The hospital must allow the fiscal intermediary to examine the records and documents maintained by the hospital in order to ascertain the validity of the data submitted by the hospital.

II. Legislation Concerning Reporting of Hospital Information

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) was enacted. Section 4007 of Public Law 100–203, which was subsequently amended by section 411(b)(6) of Public Law 100–360, sets forth several provisions concerning the reporting of hospital information under the Medicare program. Section 4007(a) of Public Law 100–203 requires the Secretary to develop and put into effect by June 1, 1989, a data base of the operating costs of inpatient hospital services for all hospitals receiving payment under Medicare. Section 4007(b) of Public Law 100–203 provides that, for cost reporting periods beginning on or after October 1, 1989, the Secretary will place into effect a standardized electronic cost reporting format for hospitals under Medicare. This provision now appears as sections 1886(f)(1) (A) and (B) of the Act.

Section 4007(c)(1) of Public Law 100–203 requires the Secretary to provide for a demonstration project (encompassing at least two States) to develop and determine the costs and benefits of establishing a uniform system of cost reporting for hospitals participating in the Medicare program. Section 4007(c)(2) of Public Law 100–203, as amended by section 411(b)(6)(C) of Public Law 100–360, specifies that these hospitals must report the following information to the Secretary:

- Hospital discharges (classified by class of primary payer).
- Patient days (classified by class of primary payer).
- Licensed beds, staffed beds, and occupancy.
- Inpatient charges and revenues (classified by class of primary payer).
- Outpatient charges and revenues (classified by class of primary payer).
- Inpatient and outpatient hospital expenses (by cost center classified for operating and capital).
- Reasonable costs.
- Other income.
- Bad debt and charity care.
- Capital acquisitions.
- Capital assets.

Section 4007(c)(3) of Public Law 100–203 requires the Secretary to develop the system to facilitate the submittal of the information in the report in an electronic form and to be compatible with the needs of the Medicare prospective payment system. Section 4007(c)(5)(A) of Public Law 100–203, as amended by section 411(b)(6)(C)(viii) of Public Law 100–360, authorizes the Secretary to establish a definition of the term "bad debt and charity care" for the purpose of the demonstration project. Section 4007(c)(5)(B) of Public Law 100–203, as amended by section 411(b)(6)(C)(ix) of Public Law 100–360, provides that the term "class", with respect to payers, means at least the Medicare program, State Medicaid programs, other third party payers, and other persons (including self-paying individuals). As amended by section 411(b)(6)(C)(vi) of Public Law 100–360, section 4007(c)(2) of Public Law 100–203 also specifies that the Secretary will develop a definition of "outpatient visit" for purposes of reporting hospital information.

III. Provisions of the August 25, 1989 Interim Final Rule

On August 25, 1989, we published an interim final rule with comment period (54 FR 35329) to implement section 4007(c) of Public Law 100–203.

A. Selection of the States to Participate in the Demonstration

Section 4007(c)(1) of Public Law 100–203 provides that the Secretary must select at least two States in which all of the hospitals must participate in the demonstration. As required by the law, one of the States selected must currently maintain a uniform system of hospital reporting. Because of the relatively short time period we had to implement the demonstration, we decided to limit the demonstration to two States. We selected California and Colorado as the participating States. California was representative of States that maintain a uniform reporting system; Colorado was representative of those that do not. (See the August 25, 1989, interim final rule for a detailed discussion of our rationale for choosing these states (54 FR 35330).)

B. Implementation of the Demonstration

This demonstration was intended to accomplish the following objectives:

- More timely collection of cost report data.
- Collection of more uniform data.
- The reporting and collecting of additional data

The demonstration began with cost reporting periods beginning on or after July 1, 1989. It encompassed two full consecutive cost reporting period cycles. (Cost reporting periods beginning on or after July 1, 1989 and before July 1, 1991). The demonstration project ended on June 29, 1992, and HCFA is continuing to receive and analyze data from the participating hospitals.

Hospitals in the two States participating in this demonstration were required to file annually the current form, Hospital and Hospital Health Care Complex Cost Report (HCFA 2552–89), and additional worksheets developed specifically for the demonstration project. We required one interim report under the demonstration for the first 6-month period during which a hospital participated in the project. The interim reports were used to evaluate the accuracy of the data source hospitals use to collect the additional data and testing the electronic submission process.

The cost report developed for purposes of the demonstration is an expanded version of the current form HCFA 2552–89. Additional worksheets were developed to allow for the collection of additional data elements. For example, the statistics have been expanded to collect patient days and discharges by primary payer such as Maternal and Child Health (title V of the Act), Medicare (title XVIII of the Act), Medicaid (title XIX of the Act), other third party payers, and other persons (including self-paying individuals). Demonstration project cost reports were to be submitted in a standardized electronic format. The hospitals' electronic programs were to be able to produce a standardized output file that can be used in any intermediary's automated system.

In order to develop the specifications for this system, we convened a workgroup comprised of representatives of the health care industry, Medicare

fiscal intermediaries, the States of California, Colorado and California State hospital associations, the Prospective Payment Assessment Commission, and HCFA. The workgroup finalized the specific methodology that was used in the design of the demonstration cost report.

The HCFA intermediaries worked with hospitals to develop the capability to submit the additional data required and to submit the cost reports electronically. If a hospital were to refuse to submit the data or refused to submit the cost reports electronically, Medicare payments to that hospital could be suspended under the provisions of sections 1815(a) and 1833(e) of the Act, under which no Medicare payments will be made to a hospital unless it has furnished the information requested by the Secretary needed to determine the amount of payments due the hospital under the Medicare program. Section 405.371(d) provides for suspension of Medicare payments to a hospital by the intermediary if the hospital has failed to submit information requested by the intermediary that is needed to determine the amount due the hospital under Medicare (that is, when a hospital fails to furnish a cost report or furnishes an incomplete cost report or fails to furnish other needed information). HCFA or the fiscal intermediary suspended payments only after exhausting all reasonable attempts to obtain the requested information.

Since the demonstration project ended on June 29, 1992, we are removing the provisions of the regulations that related to the demonstrations, that is, 42 CFR part 403, subpart D, Demonstration Project to Develop a Uniform Hospital Cost Reporting System (§§ 403.400 through 403.410). We are publishing this final rule to complete the notice and comment rule making process and to provide public documentation of the factors that we considered in the development and implementation of the demonstration project.

IV. Discussion of Public Comments

In response to the interim final rule with comment period, we received seven timely items of correspondence. We have summarized the comments and are presenting them below along with our responses.

A. General

Comment: Two commenters recommended that we use the Glossary of Health Care Terms published by the American Medical Record Association (AMRA) to assist in the development of cost report terminology. Two other commenters requested that we clarify the definitions and instructions that accompany the demonstration project cost report forms and provide specific examples where possible.

Response: We have revised the cost report instructions to provide clearer definitions and have attempted to follow the definitions provided by AMRA where appropriate.

Comment: One commenter suggested that we provide the intermediaries with training to ensure uniformity and to avoid unnecessary sanctions or penalties upon providers.

Response: We provided training classes for intermediary staff and included hospital association staff as well. The training focused on the analysis of hospital cost reports and the preparation of validation reports used to verify cost report calculations.

B. Payment of Costs Related to the Demonstration Project

Comment: Several commenters requested that the regulations clarify the payment process for incremental costs associated with the demonstration and inquired about the use of the term "pass through" in reference to these same costs. The commenters assumed that "pass through" implied that hospitals would be paid only for the Medicare share of incremental costs and that the incremental costs did not include indirect costs. In particular, they were concerned about the statement in the impact analysis of the interim final rule (54 FR 35332) that HCFA does not guarantee all of the incremental costs incurred would be paid for the collection, reporting, and electronic submission of the additional data.

Response: We used the term "pass through" to indicate that these costs would not be required to be included in the administrative and general cost center on the provider's annual cost report. Medicare paid the provider for the substantiated costs of collecting, reporting, and electronically submitting the additional data required under the demonstration project. The provider had to show an increase in operational costs as a direct result of participation in the demonstration by comparing the normal cost of submitting a cost report to the cost of submitting a cost report under the demonstration project. For example, a hospital had to show an increase in the amount of fees paid to an accounting firm for processing the additional data required by the demonstration. Due to the various types of recordkeeping systems hospitals use, we cannot provide an all-inclusive list of costs for which hospitals could receive payment. The following are general categories of incremental costs that could qualify for additional payment:

- *Software Costs*—Medicare paid for a specific charge by a vendor to process electronically the additional worksheets required for the demonstration cost report.
- *Staffing Costs*—These costs qualify for payment if additional wage costs incurred for training and recordkeeping were incurred beyond the normal wages paid the employee. For example, payment would be made if an employee was required to work additional hours over and above his/her work schedule.
- *Outside Consultation*—Medicare paid for the costs of consultative services related to the reporting, collecting and/or electronic submission of demonstration project data.
- *Overhead Costs*—Overhead costs generally are not allocated to incremental costs. Overhead costs will be paid as an incremental cost only if these costs can be specifically identified.

We did not guarantee that all incremental costs incurred will be reimbursed in full. In cases where the provider does not have the accounting ability to specifically identify overhead costs such as utilities, housekeeping, plant and maintenance, the provider must allocate these costs to other cost centers through the cost report process.

The cost of electronically submitting the annual Medicare cost report is not considered an incremental cost for purposes of this demonstration. Thus, we did not pay hospitals for the cost of electronically submitting their annual Medicare cost report. Under section 4007(b) of Public Law 100–203, almost all hospitals are required to submit cost reports electronically effective with cost reporting periods beginning on or after October 1, 1989. We believe it would have been inappropriate to make specific payments for these costs to hospitals in the demonstration when all other hospitals will not be similarly compensated, and when all hospitals participating in the Medicare program are required to submit their cost reports electronically regardless of whether they took part in this demonstration.

C. Electronic Submission and Data Collection

Comment: Two commenters expressed concern that the data collection specified in the demonstration regulations and instructions exceed the requirements in the statute. Specifically, the commenters stated that the reporting of self-pay revenue and cost by cost center is not

required and that aggregate revenue and cost by payer class is all that is required.

Response: We do not believe that we were limited to collecting only the data specified in section 4007(c)(2) of Public Law 100–203. However, we tried to minimize the collection of additional data in an effort to reduce the burden to hospitals. In order to determine some of the data elements specified in the legislation, it became necessary to expand the data collection elements. For example, worksheet S–3–D requests the total number of beds. This information was not requested in the statute; however, as indicated in the demonstration cost report instructions, this number should agree with the Medicare cost report. Bed days available, also not requested in the statute but required for the demonstration, is simply the multiplication of the number of beds times 365 days.

Worksheet C–1–D requires charge data by payer class for each revenue center. The Title V (Maternal and Child Health) payer class was not requested in the statute; however, for cost reporting purposes it was necessary to retain Title V as a separate payer class. The requirement of reporting the charges by cost or revenue center, including self-pay revenue, was not specifically stated in the statute, however, section 4007(c)(2)(G) of Public Law 100–203 specifically requests inpatient and outpatient cost by cost center. The costs by cost center could not be determined without the charges by cost center. Worksheet G–2–D reports net revenues as well as adjustments to revenue. The statute does not require that all adjustments be reported; however, in order to determine the actual revenue received by the hospitals, it was necessary to have available all adjustments made by the hospitals.

Comment: One commenter indicated that the statute does not require interim reporting. The commenter believes the interim report will not serve any useful purpose.

Response: We believe the interim report to be a vital part of this demonstration project. The purpose of the demonstration is to determine the costs and benefits of collecting specified data. The interim report served as a valuable tool in reviewing the hospitals' ability to collect the data and to identify the changes made by the hospitals and the associated cost to provide the data. It also assisted the intermediary in working with the provider to identify and rectify the reporting problems. Since annual data must be reported to Congress, the interim data provided early insight to HCFA and a means to validate the annual data.

Comment: Two commenters indicated that the statute required the demonstration project to "facilitate" electronic submission and not to require "implementation" of electronic reporting. In addition, the requirement for submission of the hard copy of the cost report as well as the electronic submission places an unnecessary burden on the providers participating in the demonstration.

Response: Section 1886(f)(1)(B) of the Act authorizes the Secretary to require electronic data submission. This section requires electronic submission of cost reports for all hospitals participating in the Medicare program for cost reporting periods beginning on or after October 1, 1989. In addition, section 4007(c)(3) of Public Law 100–203 authorizes the Secretary to facilitate the development of electronic reporting for purposes of the demonstration.

While the Secretary was not specifically mandated to implement electronic submission for the demonstration, the approach least disruptive to hospitals participating in the demonstration was to require electronic submission for both the Form HCFA–2552–89 and the Form HCFA 2552–DEMO. It would not have been efficient for hospitals in the demonstration States to operate for two years under both electronic as well as manual cost report submission. Additionally, the Conference Report that accompanied Public Law 100–203 (H.R. Rep. No. 495, 100th Cong., 1st sess. 539 (1987)) indicates that the conferees expected the Secretary to proceed expeditiously to analyze the data processing systems under his control in order to expedite the flow of data from hospitals to intermediaries to the Department and Congress. Requiring electronic submission for the demonstration provided the best mechanism for timely analysis and the preferred source for reporting to Congress.

The submission of a hard copy cost report with the electronic cost report was intended to assist in the resolution of any problems that may occur in the electronic cost report calculations and submissions. HCFA plans to eliminate the accompanying hard copy submissions in the future when such problems have been resolved.

V. Information Collection Requirements

This final rule does not impose information collection requirements; consequently it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

VI. Regulatory Impact Analysis

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumer, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final rule is not a major rule under E.O. 12291 criteria, and a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all hospitals are treated as small entities.

Section 1102(b) of the Social Security Act requires the Secretary to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds located outside of a Metropolitan Statistical Area (MSA).

As discussed in detail above, section 4007(c)(1) of Public Law 100–203, as amended by section 411(b)(6)(C) of Public Law 100–360, requires that we undertake a demonstration project to develop and assess the costs and benefits of establishing a uniform system of cost reporting for hospitals participating in the Medicare program. All hospitals in the States of California and Colorado were required to participate in this demonstration project. These hospitals were required to submit their cost reports for cost reporting periods beginning on or after July 1, 1989, and before July 1, 1991, in a uniform, electronic format. We

estimate that the demonstration project affected approximately 634 hospitals: 542 in California and 92 in Colorado (Hospital Statistics, 1987 Edition).

As discussed in the impact analysis of the interim final rule, we planned to make specific payments to hospitals for the incremental costs that were reasonable in amount and could be directly identified as having been incurred solely because of the demonstration project, that is, costs incurred for the collection, reporting, and electronic submission of the additional data. These payments were to represent the cost of collecting the additional data, and the electronic submission of the additional data only. At that time, we were unable to estimate the costs that would be incurred by each hospital participating in this demonstration. As we stated, we plan to ascertain, to the extent possible, the incremental costs that hospitals incurred during the course of this project.

As of September 1, 1992, we have received cost reports from approximately 80 percent of the hospitals that participated in this project. Very few of these hospitals reported any incremental costs associated with the demonstration project, and those costs that were reported were minimal. Also, we note that no commenters on the August 25, 1989, interim final rule indicated that the demonstration project costs would have a significant economic impact. Therefore, we believe that the demonstration project did not have a significant economic impact on a substantial number of hospitals. Moreover, this final rule, in itself, has no impact for purposes of the RFA or section 1102 of the Act because it merely responds to public comments and removes the relevant provisions from the Code of Federal Regulations.

List of Subjects in 42 CFR Part 403

Health insurance, Hospitals, Intergovernmental regulations, Medicare, Reporting and recordkeeping requirements.

42 CFR part 403 is amended under authority of section 1102 of the Social Security Act (42 U.S.C. 1302) to remove and reserve subpart D, consisting of §§ 403.400 through 403.410.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 2, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: July 8, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–25068 Filed 10–19–93; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7005

[NV–930–4210–06; N–57792]

Emergency Withdrawal of Public Mineral Estate Within the Desert National Wildlife Refuge; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 769,543 acres of public mineral estate from location and entry under the mining laws to protect the Desert National Wildlife Refuge for 1 year until the Environmental Impact Statement for the Fish and Wildlife Service's pending withdrawal application N–54955 can be completed.

EFFECTIVE DATE: October 13, 1993.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–785–6526.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and in accordance with subsection 204(e) of the Act, it is hereby ordered as follows:

1. Subject to valid existing rights, the public mineral estate in the following described lands, under the jurisdiction of the Secretary of the Interior, is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. ch. 2 (1988)), for the protection of the Desert National Wildlife Refuge:

Mount Diablo Meridian

T. 15 S., R. 54 E., unsurveyed,
  Secs. 1 to 3, inclusive, excluding area covered by Executive Order No. 8578;
  Secs. 4. E½, excluding area covered by Executive Order 8578;
  Sec. 9, E½;
  Secs. 10 to 15, inclusive;
  Sec. 16, E½;
  Sec. 21, E½;
  Secs. 22 to 27, inclusive;
  Sec. 28, E½;
  Sec. 33, E½;
  Secs. 34 to 36, inclusive.
T. 15 S., R. 55 E., unsurveyed.
T. 16 S., R. 57 E., partially surveyed,
  Sec. 7, NW¼ and S½.
T. 16 S., R. 58 E., unsurveyed,
  Secs. 11 to 14, inclusive;
  Secs. 23 to 26, inclusive;
  Secs. 35 and 36.
T. 15 S., R. 59 E., unsurveyed,
  Secs. 2 to 11, inclusive;
  Secs. 14 to 23, inclusive;
  Secs. 26 to 35, inclusive.
T. 16 S., R. 59 E., unsurveyed,
  Secs. 2 to 11, inclusive;
  Secs. 14 to 23, inclusive;
  Secs. 26 to 35, inclusive;
T. 17 S., R. 59 E.,
  Secs. 1 to 5, inclusive;
  Sec. 7, lots 3 and 4, NE¼, and S½;
  Secs. 8 to 18, inclusive;
  Secs. 21 to 26, inclusive;
  Sec. 27, N½;
  Secs. 28 and 33;
  Sec. 34, S½S½ and NE¼SE¼;
  Secs. 35 and 36.
Tps. 9, 10, 11, 12, 12½, 13, 14, 15, and 16 S., R. 60 E., unsurveyed.
T. 17 S., R. 60 E.
T. 18 S., R. 60 E.,
  Secs. 1 to 18, inclusive;
  Secs. 22 to 24, inclusive;
  Sec. 25, N½;
  Sec. 26, N½;
  Sec. 27, N½.
Tps. 9, 10, 11, 12, 12½, 13, 14, 15, and 16 S., R. 61 E., unsurveyed.
Tps. 17 and 18 S., R. 61 E.
T. 9 S., R. 62 E.,
  Sec. 4, S½S½;
  Sec. 5, NW¼SW¼ and S½S½;
  Sec. 6, lots 2 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
  Secs. 7, 8 and 9;
  Sec. 10, W½E½ and W½;
  Sec. 15, W½E½ amd W½;
  Secs. 16 to 21, inclusive;
  Sec. 22, W½E½ and W½;
  Sec. 27, W½E½ and W½;
  Secs. 28 to 33, inclusive;
  Sec. 34, lots 1 to 3, inclusive, W½NE¼, NW¼, N½SW¼, and NW¼SE¼.
T. 10 S., R. 62 E.,
  Secs. 3 to 10, inclusive;
  Sec. 14, SE¼NW¼, W½W½, and E½ SW¼;
  Secs. 15 to 22, inclusive;
  Sec. 23, W½ and W½SE¼;
  Secs. 26 to 35, inclusive;
  Sec. 36, W½W½.
T. 11 S., R. 62 E., partially surveyed,
  Sec. 1, W½W½;
  Secs. 2 to 12, inclusive;
  Sec. 13, E½, NE¼NW¼, W½W½, and E½SW¼;
  Secs. 14 to 36, inclusive.
T. 12 S., R. 62 E., partially surveyed.
Tps. 12½, 13, 14, 15, and 16 S., R. 62 E., unsurveyed.
Tps. 17 and 18 S., R. 62 E.

The lands described aggregate 769,543 acres in Clark and Lincoln Counties, Nevada.

2. This emergency withdrawal shall remain in effect for a period of 1 year from the effective date listed above unless extended under the provisions of

subsections (c)(1) or (d), whichever is applicable, and (b)(1) of Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(e) (1988).

Dated: October 13, 1993.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 93-25701 Filed 10-19-93; 8:45 am]

BILLING CODE 4310-HC-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1828 and 1852

RIN 2700-AB12

Interim Changes to NASA FAR Supplement Cross-Waiver of Liability Clauses in NASA Contracts

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: NASA has revised the NASA FAR Supplement to provide for revised cross-waivers of liability for Space Shuttle services and space station activities and to provide for a new cross-waiver of liability for Expendable Launch Vehicle (ELV) launches. These clause changes are made to be consistent with the final rule which NASA published in September 1991. That final rule established cross-waivers of liability as the regulatory basis for cross-waiver provisions to be included in NASA Space Shuttle launch services agreements and agreements for NASA ELV program launches planned to occur after July 1, 1994. NASA has been including these cross-waivers in its launch services agreements with U.S. and foreign parties. To be made fully effective for launches planned to occur subsequent to this date, the cross-waivers need to be incorporated into contracts for flow down from the contractors to their subcontractors. In addition, the final rule also republished the cross-waiver provision for space station activities. The new cross-waiver provisions for Space Shuttle and ELV program launches were consistent with the cross-waiver that has been in effect for space station activities. Currently, there are two NASA FAR Supplement cross-waiver clauses: "Interparty Waiver of Liability During STS Operations"; and "Cross-Waiver of Liability for Space Station Activities." With the publication of the final rule, the former clause required revision to correspond with the new provisions in the final rule, and a new NASA FAR Supplement clause is necessary to flow down the cross-waiver to NASA contractors involved in ELV program launches. Only minor changes need to be made to the latter clause, since it already contains language corresponding with the provision in the final rule.

DATES: This interim rule is effective October 20, 1993. Comments are due no later than November 19, 1993.

ADDRESSES: Comments should be addressed to Ms. Deborah O'Neill, NASA Headquarters, Office of Procurement, Procurement Policy Division (Code HP), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah O'Neill, Telephone: (202) 358-0428.

SUPPLEMENTARY INFORMATION:

Background

By incorporating similar cross-waivers of liability in its agreements for Space Shuttle launch services, ELV program launches, and Space Station activities, NASA and the other parties agree not to bring claims against each other for any damage to property or for injury or death of employees that occurs during the time a cross-waiver is in effect. The agreements also require the parties to flow down these cross-waivers to their related entities ensuring that a party, its contractors, and subcontractors, waive their right to sue the other party, its contractors, and subcontractors, for damages sustained in connection with activities conducted under the agreements.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933-003-00000-1. It is not distributed to the public, whether in whole or in part, directly by NASA.

Regulatory Flexibility Act

NASA certifies that this interim rule will not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.).

Paperwork Reduction Act

This interim rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1828 and 1852

Government procurement.

Tom S. Luedtke,

Acting Deputy Associate Administrator for Procurement.

1. The authority citation for 48 CFR parts 1828 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1828—BONDS AND INSURANCE

2. Part 1828 is amended as set forth below:

a. Section 1828.371 is revised to read as follows:

1828.371 Clauses for cross-waivers of liability for Space Shuttle services, Expendable Launch Vehicle (ELV) launches, and Space Station activities.

(a) In agreements covering Space Shuttle services, certain ELV launches, Space Station activities, NASA and other signatories (the Parties) agree not to bring claims against each other for any damage to property or for injury or death of employees that occurs during the time such a cross-waiver is in effect. These agreements involving NASA and other Parties include, but are not limited to, Memoranda of Understanding with foreign governments, Launch Services Agreements, and other agreements for the use of NASA facilities. These agreements require the Parties to flow down the cross-waiver provisions to their related entities so that contractors, subcontractors, customers, and other users of each Party also waive their right to bring claims against other Parties and their similarly related entities for damages arising out of activities conducted under the agreements. The purpose of the clauses prescribed in this section is to flow down the cross-waivers to NASA contractors and subcontractors.

(b) The contracting officer shall insert the clause 1852.228-72, Cross-Waiver of Liability for Space Shuttle Services, in solicitations and contracts of $100,000 or more when the work to be performed involves "Protected Space Operations" (applicable to the Space Shuttle) as that term is defined in the clause. If Space Shuttle services under the contract are being conducted in support of the Space Station program, the contracting officer shall insert the clause prescribed by paragraph (d) of this section and designate application of that clause to those particular activities.

(c) The contracting officer shall insert the clause at 1852.228-78, Cross-Waiver of Liability for NASA Expendable

Launch Vehicle (ELV) Launches, in solicitations and contracts of $100,000 or more for the acquisition of ELV launch services when the service is being acquired by NASA pursuant to an agreement described in paragraph (a) of this section. If, under a contract that covers multiple launches, only some of the launches are for payloads provided pursuant to agreements, an additional clause shall be inserted in the contract to designate the particular launches to which this clause applies. If a payload is being launched by use of an ELV in support of the Space Station program, the contracting officer shall insert the clause prescribed by paragraph (d) of this section and designate application of that particular launch.

(d) The contracting officer shall insert the clause at 1852.228–76, Cross-Waiver of Liability for Space Station Activities, in solicitations and contracts of $100,000 or more when the work to be performed involves "Protected Space Operations" (relating to the Space Station) as that term is defined in the clause.

(e) At the contracting officer's discretion, the clauses prescribed by paragraphs (b), (c), and (d) of this section may be used in solicitations, contracts, new work modifications, or extension, to existing contracts under $100,000 involving Space Shuttle activities, ELV launch services, or Space Station activities, respectively, in appropriate circumstances. Examples of such circumstances are when the value of contractor property on a Government installation used in performance of the contract is significant, or when it is likely that the contractor or subcontractor will have its valuable property exposed to risk or damage caused by other participants in the Space Shuttle services, ELV launches, or Space Station activities.

1828.373 [Removed]

b. Section 1828.373 is removed.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Part 1852 is amended as set forth below:

a. Section 1852.228–72 is revised to read as follows:

1852.228–72 Cross-Waiver of Liability for Space Shuttle Services.

As prescribed in 1828.371 (b) and (e), insert the following clause:

Cross-Waiver of Liability for Space Shuttle Services (Sep 1993)

(a) As prescribed by regulation (14 CFR part 1266), NASA agreements involving Space Shuttle flights are required to contain broad cross-waivers of liability among the parties and the parties related entities to encourage participation in space exploration, use, and investment. The purpose of this clause is to extend this cross-waiver requirement to contractors and related entities under their contracts. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.

(b) As used in this clause the terms: (1) "Contractors" and "Subcontractors" include suppliers of any kind.

(2) "Damage" means: (i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage;

(3) "Party" means a person or entity that signs an agreement involving a Space Shuttle service;

(4) "Payload" means all property to be flown or used on or in the Space Shuttle; and

(5) "Protected Space Operations" means all Space Shuttle and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving Space Shuttle services or performed under this contract. "Protected Space Operations" excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for Space Shuttle-related activities necessary to implement an agreement involving Space Shuttle services or to perform this contract. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of the Space Shuttle, transfer vehicles, payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

(6) "Related entity" means: (i) A party's contractors or subcontractors at any tier;

(ii) A party's users or customers at any tier; or

(iii) A contractor or subcontractor of a party's user or customer at any tier.

(c)(1) The Contractor agrees to a waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. This waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract, against:

(i) Any party other than the Government;

(ii) A related entity of any party other than the Government; and

(iii) The employees of any of the entities identified in paragraphs (c)(1)(i) and (c)(1)(ii) of this clause.

(2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this clause to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and Other International Acts Series (T.I.A.S.) No. 7762 in which the person, entity, or property causing the damage is involved in Protected Space Operations, and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this waiver of liability shall not be applicable to:

(i) Claims between any party and its related entities or claims between the Government's related entities (e.g., claims between the Government and the Contractor are included within this exception);

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct; and

(iv) Intellectual property claims.

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(End of clause)

b. Section 1852.228–78 is added to read as follows:

1852.228–78 Cross-Waiver of Liability for NASA Expendable Launch Vehicle Launches.

As prescribed in 1828.371 (c) and (e), insert the following clause:

Cross-Waiver of Liability for NASA Expendable Launch Vehicle (ELV) Launches (Sep 1993)

(a) As prescribed by regulation (14 CFR part 1266), NASA agreements involving ELV launches are required to contain broad cross-waivers of liability among the parties and the parties related entities to encourage participation in space exploration, use, and investment. The purpose of this clause is to extend this cross-waiver requirement to contractors and subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.

(b) As used in this clause, the term: (1) "Contractors" and "Subcontractors" include suppliers of any kind;

(2) "Damage" means: (i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage;

(3) "Party" means a person or entity that signs an agreement involving an ELV launch;

(4) "Payload" means all property to be flown or used on or in the ELV; and

(5) "Protected Space Operations" means all ELV and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving an ELV launch or performed under the contract. "Protected Space Operations" excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for ELV-related activities necessary to implement an agreement involving an ELV launch or to perform this contract. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of ELVs, transfer vehicles, payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

(6) "Related entity" means: (i) A party's contractors or subcontractors at any tier;

(ii) A party's users or customers at any tier; or

(iii) A contractor or subcontractor of a party's user or customer at any tier.

(c)(1) The Contractor agrees to a waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract, against:

(i) Any party other than the Government;

(ii) A related entity of any party other than the Government; and

(iii) The employees of any of the entities identified in paragraphs (c)(1) (i) and (ii) of this clause.

(2) The Contractor agress to extend the waiver of liability as set forth in paragraph (c)(1) of this clause to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T) 2389, Treaties and other International Acts Series (T.I.A.S.) No. 7762) in which the person, entity, or property causing the damage is involved in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(i) Claims between any party and its related entities or claims between any party's related entities (e.g., claims between the Government and the Contractor are included within this exception);

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct; and

(iv) Intellectual property claims.

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver shall not be applicable when the Commerical Space Launch Act cross-waiver (49 U.S.C. App. 2615) is applicable.

(End of clause)

c. Section 1852.228–76 is revised to read as follows:

1852.228–76 Cross-Waiver of Liability for Space Station Activities.

As prescribed in 1828.371 (d) and (e), insert the following clause:

Cross-Waiver of Liability for Space Station Activities (Sep 1993)

(a) The Intergovernmental Agreement for the Space Station contains a broad cross-waiver provision to encourage participation in the exploration and use of outer space through the Space Station. The purpose of this clause is to extend this cross-waiver requirement to contractors and subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve this objective of encouraging participation in space activities.

(b) As used in this clause, the term: (1) "Damage" means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage.

(2) "Launch Vehicle" means an object (or any part thereof) intended for launch, launched from Earth, or returning to Earth which carries payloads or persons, or both.

(3) "Partner State" means each contracting party for which the "Agreement among the Government of the United States of America, Governments of Member States of the European Space Agency, Government of Japan, and the Government of Canada on Cooperation in the Detailed Design, Development, Operation, and Utilization of the Permanently Manned Civil Space Station" (the "Intergovernmental Agreement") has entered into force, in accordance with Article 25 of the Intergovernmental Agreement. It includes the Cooperating Agency of a Partner State. The National Aeronautics and Space Administration (NASA) for the United States, the Canadian Space Agency (CSA) for the Government of Canada, the European Space Agency and the Science and Technology Agency of Japan (STA) are the Cooperating Agencies responsible for implementing Space Station cooperation. A Partner State also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan to assist the Government of Japan Cooperating Agency in the implementation of that MOU.

(4) "Payload" means all property to be flown or used on or in a launch vehicle or the Space Station.

(5) "Protected Space Operations" means all launch vehicle activities, space station activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of the Intergovernmental Agreement or performed under this contract. "Protected Space Operations" also includes all activities related to evolution of the Space Station as provided for in Article 14 of the Intergovernmental Agreement. "Protected Space Operations" excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process except when such development is for Space Station-related activities in implementation of the Intergovernmental Agreement or in performance of this contract. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles, payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

(6) "Related entity" means: (i) A Partner State's contractors or subcontractors at any tier;

(ii) A Partner State's users or customers at any tier; or

(iii) A contractor or subcontractor of a Partner State's user or customer at any tier.

(7) "Contractors" and "Subcontractors" include suppliers of any kind.

(c)(1) The Contractor agrees to a cross-waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract against:

(i) Any Partner State other than the United States;

(ii) A related entity of any Partner State other than the United States; and

(iii) The employees of any of the entities identified in paragraphs (c)(1) (i) and (ii) of this clause.

(2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this clause to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and other International Acts Series (T.I.A.S.) No. 7762) in which the person, entity, or property causing the damage is involved in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(i) Claims between the United States and its related entities or claims between the related entities of any Partner State (e.g., claims between the Government and the Contractor are included within this exception);

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct; and

(iv) Intellectual property claims.

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(End of clause)

[FR Doc. 93-25646 Filed 10-19-93; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB73

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Giant Garter Snake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the giant garter snake (*Thamnophis gigas*) to be a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). This snake inhabits localized wetland habitats in portions of the Central Valley of California. The species is threatened by habitat loss and threats from urbanization, flooding, contaminants, agricultural and maintenance activities, and introduced predators. This rule extends the Act's protective provisions to the giant garter snake throughout its range.

EFFECTIVE DATE: November 19, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, room E-1803, Sacramento, California 95825-1846 (telephone 916/978-4866).

FOR FURTHER INFORMATION CONTACT: Peter C. Sorensen (see **ADDRESSES** section) at 916/978-4866.

SUPPLEMENTARY INFORMATION:

Background

The giant garter snake (*Thamnophis gigas*) is one of the largest garter snakes, reaching a total length of at least 162 centimeters (cm) (64 inches (in)) (George H. Hanley, pers. comm. to Mark Jennings, USFWS, pers. comm., 1993). Females are slightly longer and proportionately heavier (typically 500-700 grams (g)) (1.0-1.4 pounds (lb)) than males (George E. Hansen, biological consultant, pers. comm., 1991). Dorsal background coloration varies from brownish to olive with a checkered pattern of black spots, separated by a yellow dorsal stripe and two light colored lateral stripes. Background coloration and prominence of black checkered pattern and the three yellow stripes are geographically and individually variable (Hansen 1980). Individuals in the northern Sacramento Valley tend to be darker with more pronounced mid-dorsal and lateral stripes (California Department of Fish and Game (CDFG) 1992). The ventral surface is cream to olive or brown and sometimes infused with orange, especially in northern populations (CDFG 1992). First described by Fitch (1940) as a subspecies of the northwestern garter snake (*Thamnophis ordinoides*), the taxonomic status of the giant garter snake, along with that of other western garter snakes, has undergone several revisions, including its placement as a subspecies of the western terrestrial garter snake (*Thamnophis elegans*) (Johnson 1947, Fox 1951), and then the western aquatic garter snake (*Thamnophis couchii*) (Fox and Dessauer 1965, Lawson and Dessauer 1979). In 1987, it was accorded the status of a full species, *Thamnophis gigas* (Rossman and Stewart 1987).

Endemic to valley floor wetlands in the Sacramento and San Joaquin Valleys of California, the giant garter snake inhabits marshes, sloughs, ponds, small lakes, low gradient streams, and other waterways and agricultural wetlands, such as irrigation and drainage canals and rice fields. Giant garter snakes feed on small fishes, tadpoles, and frogs (Fitch 1941, Hansen 1980, Hansen 1988). Habitat requisites consist of (1) adequate water during the snake's active season (early-spring through mid-fall) to provide food and cover, (2) emergent, herbaceous wetland vegetation, such as cattails and bulrushes, for escape cover and foraging habitat during the active season, (3) grassy banks and openings in waterside vegetation for basking, and (4) higher elevation uplands for cover and refuge from flood waters during the snake's dormant season in the winter (Hansen 1988). Giant garter snakes are absent from larger rivers and other water bodies that support introduced populations of large, predatory fish, and from wetlands with sand, gravel, or rock substrates (Hansen 1980, Rossman and Stewart 1987, Brode 1988, Hansen 1988). Riparian woodlands do not provide suitable habitat because of excessive shade, lack of basking sites, and absence of prey populations (Hansen 1980).

The giant garter snake inhabits small mammal burrows and other soil crevices above prevailing flood elevations throughout its winter dormancy period (November to mid-March) (G. Hansen, pers. comm., 1991). Giant garter snakes typically select burrows with sunny aspects along south and west facing slopes (G. Hansen, pers. comm.). Upon emergence, males immediately begin wandering in search of mates (G. Hansen, pers. comm.). The breeding season extends through March and April, and females give birth to live young from late July through early September (Hansen and Hansen 1990). Brood size is variable, ranging from 10 to 46 young, with a mean of 23.1 (n=19) (Hansen and Hansen 1990). At birth, young average about 20.6 cm (8.1 in) snout-vent length and 3-5 g (0.1-0.18 ounces (oz)) (Hansen and Hansen 1990, G. Hansen, pers. comm. 1991). Young immediately scatter into dense cover and absorb their yolk sacs, after which they begin feeding on their own. Although growth rates are variable, young typically more than double in size by one year of age (G. Hansen, pers. comm. 1991). Sexual maturity averages 3 years of age in males and 5 years for females (G. Hansen, pers. comm. 1991).

Fitch (1940) described the historical range of the species as extending from the vicinity of Sacramento and Contra Costa Counties southward to Buena Vista Lake, near Bakersfield in Kern County. Prior to 1970, the giant garter snake was recorded historically from 17

localities (Hansen and Brode 1980). With five of these localities clustered in and around Los Banos, Merced County, the paucity of early records makes it difficult to determine precisely the species' former range. Nonetheless, these records coincide with the historical distribution of large flood basins, fresh water marshes, and tributary streams. Reclamation of wetlands for agriculture and other purposes apparently extirpated the species from the southern one-third of its range by the 1940's–1950's, including the former Buena Vista Lake and Kern Lake in Kern County, and the historic Tulare Lake and other wetlands in Kings and Tulare Counties (Hansen and Brode 1980, Hansen 1980).

As recently as the 1970's, the range of the giant garter snake extended from near Burrell, Fresno County (Hansen and Brode 1980), northward to the vicinity of Chico, Butte County (Rossman and Stewart 1987). As discussed in more detail below, there are no post-1980 giant garter snake sightings from Burrell, Fresno County, northward to Stockton, San Joaquin County (California Natural Diversity Data Base records). Giant garter snake populations currently are distributed in portions of the rice production zones of Sacramento, Sutter, Butte, Colusa, and Glenn Counties; along the western border of the Yolo Bypass in Yolo County; and along the eastern fringes of the Sacramento-San Joaquin River delta from the Laguna Creek-Elk Grove region of central Sacramento County southward to the Stockton area of San Joaquin County (Hansen 1988).

Prior to State listing in 1971, 17 giant garter snake localities, representing about 9 distinct populations, were known from the literature and museum records. Subsequent surveys by the California Department of Fish and Game (CDFG) in the mid-1970's indicated that eight of these localities, representing about four populations, had since become extinct (Hansen and Brode 1980). These same surveys documented a total of 36 giant garter snake localities, 28 of them newly discovered, representing about 7 new populations not previously known. Thus, the result of these surveys indicated a net increase of 3, for a total of 12 distinct giant garter snake populations known to be extant around 1980.

In the mid-1980's, CDFG conducted another status survey of the giant garter snake throughout its range (Hansen 1988), surveying more than 460 sites. Giant garter snakes were found at 46 of these localities, representing 7 distinct populations, 3 previously unknown. However, this study failed to observe snakes at seven previously documented populations. The uniform census methods used in the 1970's and 1980's studies were designed to detect any changes in relative abundance. Hence, although the negative data did not prove conclusively that the species had been extirpated from the seven populations, they reflect, at a minimum, severe declines in population density to undetectably low levels. For example, former strongholds, such as Mendota Waterfowl Management Area, which yielded 20 captures on a single day in April 21, 1976, has not produced any sightings throughout the 1980's and 1990's, despite repeated sampling.

In 1992, a third round of giant garter snake studies were conducted, in part precipitated by the Service's proposal to list the species. These studies further clarified the current rangewide status of the giant garter snake (Beak 1992, Pacific Environmental Consultants 1992).

A cluster of locality records in a contiguous habitat area represents a population. Thirteen populations have been identified using locality records collected since the mid-1970's (G. Hansen, pers. comm., 1993; J. Brode, pers. comm., 1993). The 13 populational clusters largely coincide with historical riverine flood basins and tributary streams throughout the Central Valley (Hinds 1952, Hansen 1980, Brode and Hansen 1992): (1) Butte Basin, (2) Colusa Basin, (3) Sutter Basin, (4) American Basin, (5) Yolo Basin—Willow Slough, (6) Yolo Basin—Liberty Farms, (7) Sacramento Basin, (8) Badger Creek—Willow Creek, (9) Caldoni Marsh, (10) East Stockton—Diverting Canal and Duck Creek, (11) North and South Grasslands, (12) Mendota, and (13) Burrell—Lanare. Within the rice production zones associated with population clusters 1 to 4 above, giant garter snakes occupy the maze of interconnected agricultural water delivery and drainage facilities. The giant garter snake populations 5 to 13 above occur discontinuously in typically small, isolated patches of valley floor habitat. This latter group of giant garter snake populations supports few individuals because of limited extent and quality of suitable habitat (Hansen 1988). The species is absent from the northern portion of the San Joaquin Valley, where the floodplain of the San Joaquin River is restricted to a relatively narrow trough by alluvium from tributary rivers and streams. This 100 kilometer (km) (62 mile (mi)) gap in its distribution separates historically known populations in Merced County from those along the eastern fringes in the Sacramento-San Joaquin River Delta (known as the Delta) in San Joaquin County (Hansen and Brode 1980). Suitable habitat that may have existed formerly throughout remaining portions of the Delta has been eliminated (Hansen 1988). Below is a summary of the status and threats associated with each of these 13 populations (J. Brode, pers. comm., 1993; G. Hansen, pers. comm., 1993):

(1) *Butte Basin:* Approximately six locality records are known from the basin and tributary streams/canals. Existing records indicate that the species is widely distributed in low population numbers/densities, primarily in water delivery/drainage facilities and perhaps associated rice fields. Giant garter snakes appear restricted to unnatural (agricultural) habitats. Individuals are susceptible to flooding. Mortality from predatory fish and birds, vehicular traffic, agricultural practices, and maintenance of water channels represent the primary threats. These chronic threats imperil giant garter snakes in individual localities but do not seem great enough to place at imminent risk the continued survival of the entire population.

(2) *Colusa Basin:* Approximately 10 discrete locality records are known from the basin and tributary streams/canals. Available information indicates a tenuous connection between localities clustered at the north and south end of the basin. Status and threats are similar to the Butte Basin population.

(3) *Sutter Basin:* Approximately five discrete locality records are known from the basin and tributary streams/canals. The overall situation is similar to the previous two populations.

(4) *American Basin:* The numerous records distributed throughout most of the basin indicate that a large giant garter snake population inhabits this rice production district. Scattered natural habitats comprise a small component of this larger, agricultural habitat complex. Flooding threatens this population; however, it is under less threat of flooding than some of the other populations. The American Basin population also is threatened by incremental, large scale urbanization. Review of development proposals by the Service and CDFG indicate that mitigation measures proposed for impacts to the giant garter snake would not offset adverse effects and therefore would not eliminate the threat to the existence of this population.

(5) *Yolo Basin—Willow Slough:* Approximately two records are known from along Willow Slough, Willow Slough Bypass, and a limited amount of rice fields. Available habitat is limited and degraded. Based on habitat scarcity

and an associated small population size, threats are imminent. Because of its small size, this population is vulnerable to extirpation from stochastic (random) environmental, demographic, and genetic processes. Primary threats include proposed urban development on the Conway Ranch, flood control and agricultural practices, flooding, road mortality, and predatory fish. The Putah Creek population within this basin apparently has been extirpated (G. Hansen, *in litt.*, 1992) because of stream desiccation caused by upstream water diversions and impoundments (USFWS 1992).

(6) *Yolo Basin—Liberty Farms:* Two records from an irrigation canal network, combined with an absence of suitable, natural habitat in the area, suggest that this population is restricted entirely to degraded, artificial habitat. Given the known effect of livestock grazing on garter snakes and their associated wetland habitats (Szaro *et al.* 1989), grazing likely threatens the giant garter snake in this area. Threats are similar to those at Willow Slough, absent the threat of urban development.

(7) *Sacramento Basin:* Except for one record from 1982, the other six records from this population date from the 1970's. During the intervening period, numerous development projects have been constructed in or near giant garter snake habitat in this rapidly urbanizing area. Any remaining populations are vulnerable to secondary effects of urbanization, such as increased predation by house cats and vehicular mortality. Most documented localities have been adversely impacted by development, including freeway construction, flood control projects, and commercial development. Several former localities are known to have been lost and/or depleted to the extent that continued viability is in question (Hansen, *in litt.*, 1992, G. Hansen, pers. comm., 1992). The scarcity of remaining suitable habitat, flooding, stochastic processes, and continued threats of habitat loss pose continued threats to this population.

(8) *Badger Creek—Willow Creek:* Restricted to less than about 200 acres of natural, emergent marsh, this population faces imminent threats from flooding, livestock grazing, and predation by fish and birds. Planning for commercial development of the property is in progress. Habitat scarcity and limited population size render the giant garter snake vulnerable to extirpation in this area from stochastic environmental, demographic, and genetic processes.

(9) *Caldoni Marsh:* Also known as White Slough Wildlife Area, about 50 acres of suitable habitat remains, the most valuable portion situated on private land. Approximately 280 acres of habitat was eliminated during the construction of Interstate 5 around 1978 to 1979. Restricted to such a small patch size of remaining habitat, this population is vulnerable to extirpation from stochastic processes. A locality record along Eight Mile Road possibly connected with this population apparently has been extirpated due to habitat loss (J. Brode, CDFG, pers. comm. 1992; G. Hansen, *in litt.*, 1992).

(10) *East Stockton—Diverting Canal and Duck Creek:* Known from a few locality records along the Diverting Canal and Duck Creek, the status of this population is unknown. Remaining habitat consists of degraded habitat in flood control bypass channels, and is dependent upon vegetation maintenance practices. Impacts associated with channel maintenance and vehicular mortality represent the most severe threat. The age of giant garter snake records raise questions regarding the long-term viability of this population. Stochastic threats to this population, if still extant, are similar to those described above for the other smaller populations.

(11) *North and South Grasslands:* Twenty-four records in the California Natural Diversity Data Base, all prior to 1976, delimited a formerly extensive complex of occupied suitable habitat, probably the largest regional population in the San Joaquin Valley since the demise of the Tulare and Buena Vista lakebeds. However, Hansen (1988) searched 38 localities in 1986 to 1987, and Beak (1992) searched 7 localities in 1992. Neither survey found any giant garter snakes. As discussed in more detail under Factor E in the "Summary of Factors Affecting the Species," the prevalence of selenium and salinity contamination throughout this area and absence of any giant garter snake sightings since the 1970's indicates that this population, if still extant, is at risk. In many areas, the restriction of suitable habitat to water canals bordered by roadways and levee tops renders giant garter snakes vulnerable to vehicular traffic and vegetation maintenance practices. In addition, livestock grazing has adversely impacted certain areas in proximity to known locality records (J. Brode, pers. comm., 1992). Overall, threats to this population are imminent and severe.

(12) *Mendota:* As recently as the late 1970's and perhaps early 1980's, a relatively small acreage of habitat in and around the northern portions of the Mendota Waterfowl Management Area and to a lesser extent, Mendota Pool, supported a robust population of giant garter snakes. However, flooding during the winter of 1985 to 1986, presence of predatory fish, vehicular mortality, and disturbance and persecution by fishermen and recreationists apparently has depleted population levels at this former stronghold (J. Brode, pers. comm., 1992; G. Hansen, pers. comm., 1992; R. Hansen, biological consultant, pers. comm., 1992). Recent survey efforts by Hansen (1988) and Beak (1992) failed to observe any giant garter snakes. If still extant, the future persistence of this population is under threat.

(13) *Burrell-Lanare:* The remnant population in this area never was secure or prevalent, based on the limited amount of fragmented habitat available along a few irrigation/drainage canal networks. Recent observations (J. Brode, pers. comm., 1992; G. Hansen, pers. comm., 1992) found deteriorating habitat conditions caused by canal maintenance practices, public use, and presence of predatory fish. Accordingly, Hansen (*in litt.*, 1992) concluded that this population apparently has been extirpated. If still extant, threats are imminent and severe, including threats associated with small population size, such as stochastic events.

Previous Federal Action

On September 18, 1985, the Service published the Vertebrate Wildlife Notice of Review (50 FR 37958), which included the giant garter snake as a category 2 candidate species for possible future listing as threatened or endangered. Category 2 candidates are species for which information contained in Service files indicates that proposing to list is possibly appropriate but additional data are needed to support a listing proposal. In the January 6, 1989, Animal Notice of Review (54 FR 554), the Service again included the giant garter snake as a category 2 candidate and solicited information on the status of this species. On September 12, 1990, the California-Nevada Chapter of the American Fisheries Society petitioned the Service to list the giant garter snake as an endangered species. The Service published a 90-day petition finding on March 22, 1991 (56 FR 12146), which concluded that the petition presented substantial information indicating that listing may be warranted. On November 21, 1991, the Service changed the status of the giant garter snake to a category 1 candidate in the most recent Animal Notice of Review (56 FR 58804). Category 1 candidates are species for which the Service has on file enough substantial information on biological vulnerability and threats to support

proposals to list them as endangered or threatened species. This change in category status was based in part on rangewide distributional and abundance studies conducted by CDFG (Hansen 1988), threats to San Joaquin Valley populations from contaminants in irrigation drain water, and escalating urbanization. On December 27, 1991 (56 FR 67046), the Service published a proposal to list the giant garter snake as an endangered species. The proposed rule constituted the final 1-year finding for the petitioned action pursuant to section 4(b)(3)(B) of the Act. The Service now determines the giant garter snake to be a threatened species with the publication of this rule.

(The Service reevaluated the status of the giant garter snake before adopting this final rule. The giant garter snake remains in 13 populations, 3 of which are not imminently threatened. Threatened status, therefore, seems more appropriate for this species.

Summary of Comments and Recommendations

In the December 27, 1991, proposed rule (56 FR 67046) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule or withdrawal of the proposed rule. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Notices of the proposal were published in 11 newspapers throughout the range of the giant garter snake inviting general public comment: *Chico Enterprise-Record, Corning Daily Observer, Davis Enterprise, Fresno Bee, Marysville-Yuba City Appeal Democrat, Merced Sun Star, Modesto Bee, Oroville Mercury Register, Sacramento Bee, Stockton Record, and Woodland Daily Democrat.* In response to the proposed rule, the Service received 18 written requests for a public hearing(s) within the first 45 days of the comment period. Consequently, the Service published a notice of public hearing on May 15, 1992 (57 FR 20806), and a separate notice on May 26, 1992 (57 FR 21933), reopening the public comment period until July 15, 1992. The Service conducted the public hearing on June 1, 1992, at the Radisson Hotel in Sacramento, California. Testimony was taken from 6 p.m. to 8 p.m. Notice of the public hearing was published in the *Sacramento Bee.* Numerous additional notices soliciting public comment were sent for the proposal and public hearing to interested/affected parties.

During and after the public hearing, the Service learned that certain interests were conducting additional field work on the status and distribution of the giant garter snake throughout its range and that this information would be provided to the Service upon completion. To consider this information when it became available, the Service again reopened the public comment period from December 18 through 28, 1992. The Service received two reports that reached conclusions that differed from those stated in the proposed rule (Beak 1992, Pacific Environmental Consultants 1992). To help resolve these issues, the Service convened a panel of experts that evaluated the merits of work performed on the giant garter snake. The panel reached the same conclusions as reached in the Service's proposed rule.

During the comment periods, the Service received 58 comments (letters and oral testimony) from 45 interested parties. CDFG was among 14 commenters expressing support for the listing proposal; 24 commenters opposed the proposal. Seven commenters expressed a neutral position. Written comments and oral statements obtained during the public hearing and comment periods are combined in the following discussion. Some commenters provided additional information that has been incorporated into this final rule. Comments opposing or questioning the rule and the Service's response to each are organized under four issues, as follows.

Issue 1. Inadequate Scientific Data

Scientific Standards of Proof

Comment: Several respondents indicated that the listing proposal was not based on scientific standards of proof, contained unsubstantiated speculation, and presented unbalanced hypotheses without acknowledgement of other possible conclusions.

Service Response: The Act requires the Service to use the best available biological information as the sole basis for its listing decisions. The Service considers professional judgment and expert opinion by knowledgeable biologists, among other sources of information. Thus, listing proposals are based on the preponderance of evidence rather than standards obtained through application of the scientific method (e.g., statistically valid test).

Comment: Many commenters believed that the listing proposal was not valid because much of the information supporting the need to list the giant garter snake was obtained by one or a few individuals, and the data and reports prepared by those individuals had not been published in peer reviewed journals.

Service Response: Though published information in peer reviewed journal articles is generally considered a credible source of information among the scientific community, such information is not often available for threatened and endangered species at the time of a listing determination. In most cases, one or a few biologists have provided the bulk of the status data used by the Service to support a listing action. Agency reports commonly provide information needed to support a listing decision. Time delays between the completion of research and publication in a scientific journal are often on the order of several to many years. Such delays would allow the status of a species to continue to decline prior to listing under the Act and would not be in keeping with its purposes. As specified at 50 CFR 424.13, the Service must consider a broad range of informational sources, including comments from interested parties, in its listing decisions. Hence, the Act does not limit, nor would it be appropriate for the Service to constrain, the scope of information suitable for consideration in the preparation of listing proposals.

Comment: Several commenters contended that estimates of baseline and current population levels are requisite to substantiating the need to list the giant garter snake.

Service Response: Baseline and current population levels often are not known for species at the time they are listed by the Service. Trend information on population levels and habitat loss/availability or population/habitat indices often represent the best available information upon which to base listing actions. These types of information provide accurate indicators of population viability. Furthermore, for most species, it is difficult to obtain population estimates, and such methods are typically associated with wide confidence intervals, especially for species that are difficult to observe or capture.

Distribution and Abundance

Comment: Numerous commenters claimed that the available information on the distribution and abundance of the giant garter snake provides an inadequate basis for listing. These commenters also asserted that the 127 locality records currently known for the giant garter snake indicate that the species is growing in numbers and expanding its range, further suggesting that the species does not warrant listing.

Service Response: Several studies were conducted in 1992 to clarify the current rangewide status of the giant garter snake. As a part of its Merced County Streams project, the U.S. Army Corps of Engineers (Corps) sponsored field work to ascertain the presence or absence of giant garter snakes in suitable habitat within the affected project area. No garter snakes were observed (G. Hansen, pers. comm., 1992). In an unrelated study, CDFG conducted intensive surveys of all suitable habitat on lands owned by the State from Stockton, San Joaquin County, northward throughout the remaining range of the giant garter snake in the Sacramento Valley. Giant garter snakes were found at two sites; one at a new locality within the Butte Basin population complex, the other at a known historic site (T. King, CDFG, pers. comm., 1992). In addition, Beak (1992) indicated that within the 95 areas studied, 3 previously unrecorded localities within the Butte Basin and Sutter Basin population clusters were found. Thus, no new populations were discovered to reveal a range expansion, and none of the information presented suggested that these populations are under lesser threat than previously thought. However, the Service has reevaluated the status of the garter snake and determined that listing as threatened is more appropriate than listing it as endangered.

Of the 127 locality records (Pacific Environmental Consultants 1992), many represent repetitive sightings (observed at different points in time from the same or adjacent locality(ies), or areas in close or identical geographic proximity). For example, 11 records listed for Caldoni Marsh, Thornton Road, White Slough, or Highway 12, as variously reported by different investigators, refer to sightings from the same 50-acre marsh adjacent to less than 1.0 mile of linear canal habitat. A single occurrence in the American Basin is represented by 35 records. One of the 127 records is questionable because it is located outside of the historic range of the species.

The 127 locality records represent 68 reasonably separable records, distributed among 13 populations. During 1992 survey efforts, no new populations were discovered. Many of these 68 separable records are no longer extant.

Comment: Several commenters claimed that the proposed rule, by not comprehensively analyzing all the available information on the former and current extent of wetlands in the Central Valley, exaggerated the historical loss of giant garter snake habitat. These and other commenters also contended that suitable habitat exceeds the estimate of currently available habitat discussed in the proposed rule.

Service Response: It was not the intention, nor was it appropriate to conduct an exhaustive analysis of information pertaining to the history of wetland habitat losses affecting the giant garter snake. The purpose of addressing historic wetland losses in the proposed rule was to provide a context to the Central Valley ecosystem inhabited by the giant garter snake.

The primary issue is whether or not current activities including on-going habitat loss threaten the continued existence of the giant garter snake. Discussions of historic habitat availability are of academic interest, and sometimes contribute to an overall understanding of a species' decline. As discussed under the "Summary of Factors Affecting the Species," much of the present wetlands that occur within the current range of the giant garter snake are not stable, or are managed in a manner that is inconsistent with the needs of the snake, or are under threat of urban development.

Comment: Several respondents concluded that because available information suggests the giant garter snake has adapted to agricultural practices in certain areas, all of the 365,730 acres of rice fields currently in production provide suitable or potentially suitable habitat. These commenters also contended that the giant garter snake is widespread and abundant throughout these regions and with the proliferation of rice production, the species recently has spread into new areas beyond its historical range.

Service Response: Although giant garter snakes occupy some rice production areas of the American Basin (G. Hansen, pers. comm., 1992), they do not occur in many rice growing regions. A number of factors may account for giant garter snake absence from rice fields: (1) As discussed under Factor E in the "Summary of Factors Affecting the Species," frequent, severe winter flooding precludes occupation over thousands of acres, (2) burning rice fields and canals after harvest for vegetation management leaves giant garter snakes exposed upon emergence in the spring, and (3) disced roadsides and manicured vegetation often are prevalent. Furthermore, the amount of acreage in rice production varies from year to year, and, hence, rice fields do not represent habitats that are available on a long-term basis. Intensive studies conducted by Hansen (1988) and Beak (1992) in the rice production zones of the Sacramento Valley found giant garter snakes at approximately 9 of 84 study sites and 4 of 68 sites, respectively. The majority of these records were from water supply/drainage canals, not rice fields.

Comment: Another commenter conducted a literature survey and found that wetlands providing suitable habitat for the giant garter snake may have increased over the last decade as a result of effective State and Federal wetlands protection and restoration programs. The commenter concluded that this expanded habitat base demonstrated that the species does not warrant listing.

Service Response: This particular commenter compared wetland acreages in various studies that focused on different geographic study areas, and erroneously concluded that wetland habitats are expanding. For example, the two Service studies referenced by the commenter cannot be used together to draw conclusions on changes in wetland acreages because of incompatible data for the Central Valley and the entire State. Overall wetland habitat has declined within the historic range of the giant garter snake (Frayer *et al.* 1989).

Comment: One commenter stated that because the Service failed to present data relating habitat abundance and quality to giant garter snake population levels, there is no reason to believe that the species is endangered simply due to habitat loss.

Service Response: Although quantitative data do not exist on the relationships between giant garter snake abundance and habitat quality, available information provides sufficient basis for the Service to conclude that giant garter snake population levels in present-day habitats are depleted. Recent surveys throughout the range of the species have failed to find previously unknown populations, and have failed to find snakes at previously occupied sites.

Inadequate Documentation of Threats

Comment: A few commenters noted that the lack of extirpations reflected in the record suggests that the giant garter is not declining or facing severe threats to its existence. Another commenter argued that the giant garter snake serves as a bio-indicator, providing an early warning of ecosystem disturbances.

Service Response: Confirmed and likely extirpations within the recent past known to the Service include (1) generalized habitat degradation at the Burrell/Lanare population in Fresno County (G. Hansen, *in litt.*, 1992), (2) flood control dredging and commercial development along Elk Grove and Laguna Creeks in Sacramento County (USFWS file information), (3) water

diversion/desiccation at the Franklin Road and Hood-Franklin Road area in Sacramento County (G. Hansen, pers. comm., 1992), (4) habitat loss and degradation along Eight Mile Road in San Joaquin County (J. Brode, pers. comm., 1992), (5) Morrison Creek/Beach Lake quarry excavation along Interstate 5 in Sacramento County (G. Hansen, pers. comm., 1992), (6) desiccation of Putah Creek in Yolo County (USFWS 1992), (7) high levels of selenium and salinity (sodium sulphate) contamination in portions of the north and south Grasslands (various papers cited below), and (8) disappearance of the species in the Natomas East Main Drainage Canal during the 1980's, coincident with urbanization of the North Natomas area in the American Basin. Other populations and localities also face imminent threats that render them vulnerable to extirpation in the foreseeable future.

Comment: One commenter observed that the Sacramento metropolitan area was the only region experiencing significant amounts of urbanization and that these impacts were satisfactorily addressed under State law.

Service Response: Since at least the mid-1980's, human populations have been growing rapidly throughout the Central Valley of California. The expansion of urban areas in the vicinity of giant garter snake populations is more fully discussed under Factor A in the "Summary of Factors Affecting the Species."

Comment: Several commenters indicated that the paucity of historic records for the giant garter snake suggests a patchy distribution under pristine conditions; hence, the Service's assumption that large scale loss of wetlands since 1850 does not necessarily equate to a dramatic loss of giant garter snake populations.

Service Response: The Act requires the Service to base its listing actions upon present threats facing the species, not upon historic abundance. The high correlation of historic giant garter snake records with the distribution of the historic floodbasins in the Central Valley suggest that the species occurred primarily in the vast bulrush and cattail marshes that characterized these floodbasins and tributary streams (Hinds 1952, Hansen 1980, Brode and Hansen 1992). Thus, abundant suitable habitat was available historically. Documented losses of populations known from the mid-1970's are more meaningful to the Service's decision than are speculations about historical distribution.

Comment: Several commenters contended that the proposed rule did not adequately document the Service's conclusion that predation (either in general or from introduced fish), contaminants, flooding, or agricultural impacts were severe enough factors to contribute to the endangerment of the giant garter snake.

Service Response: Additional references and discussion have been provided under the section entitled "Summary of Factors Affecting the Species" that substantiate the severity of threat to the giant garter snake by these and other factors. Predators, such as largemouth bass, catfish, and bullfrogs, contribute to the declining status of the giant garter snake. Agricultural areas (primarily rice fields) do not contain stable habitat for the garter snake. Where escape cover is lacking, garter snake populations may be reduced or eliminated through flooding. Contaminants such as selenium and heightened salinity contribute to the declining status of the giant garter snake.

Issue 2. Alternate Listing Status or Management Approach

Comment: One respondent commented that because captive breeding programs have proven successful for other reptiles, such a program provides an acceptable alternative to listing the giant garter snake.

Service Response: The ultimate goal of captive breeding programs is to return the species to its wild habitats. The Service views captive propagation programs as a last recourse for conserving species. The Act directs the Service to focus on conserving the ecosystems upon which threatened and endangered species depend. Thus, captive breeding does not represent a suitable alternative to listing the species.

Comment: Several commenters concluded that the Service has not substantiated that the severity of threats facing the giant garter snake are sufficient to endanger the species with extinction. In supporting this claim, one commenter pointed out the apparent inconsistency on the part of the Service for listing the Puerto Rican crested toad as a threatened species, known from a few localities, while proposing the giant garter snake as endangered, which is known from many more localities than the toad.

Service Response: The Service believes that threatened status is warranted for the giant garter snake. The natural ecosystem historically occupied by the giant garter snake has been lost in its entirety, through water diversions and land reclamation practices to the extent that natural flooding and vegetational patterns have been eliminated from California's landscape. The species no longer occurs throughout the southern third of its former range, and appears vulnerable to extinction throughout the entire San Joaquin Valley and southern Sacramento Valley, encompassing about three-fourths of its historic distribution. However, three populations do not seem to be imminently threatened. Based on the known and likely extirpation of the species throughout a significant portion of its range, the Service concludes that the giant garter snake is likely to become endangered throughout all or a significant portion of its range within the foreseeable future, and therefore fits the Act's definition of threatened.

Decisions to list species as endangered or threatened are based upon many factors relating to the degree of threat facing a species. The total distribution of a species is only one of these factors. Each species presents a different combination of these factors and must be judged on an individual basis.

Comment: Several commenters noted that the proposed giant garter snake listing would exacerbate flooding threats to the species by delaying authorization/construction of the Corps' American River Watershed Investigation flood control project.

Service Response: The recent decision by the U.S. Congress not to authorize this flood control project was based on numerous considerations above and beyond those involving the proposed listing of the giant garter snake.

Comment: Several commenters stated that improved management of State and Federal waterfowl refuges and protective efforts through the Service's Central Valley Habitat Joint Venture were not considered in the proposed rule and would alleviate the need for listing. Other State and Federal land holdings, associated easement programs, private duck hunting clubs and refuges, military facilities, and pending or proposed land acquisitions provide potential habitat for giant garter snakes, and if managed appropriately would foreclose the need for listing.

Service Response: Although historical giant garter snake records are known from six State or Federal refuges, suitable habitat and associated garter snake populations are sufficiently limited that even dramatic changes in management practices would not preclude the need to list the species. These refuges encompass a very small portion of 4 of the 13 populations.

Historic management of many areas was not conducive to maintenance of healthy giant garter snake populations

because funding levels typically were not available or adequate to implement appropriate management practices, and a lack of available water precluded the potential to create or restore suitable habitat. The species apparently has been extirpated from some of the State and Federal refuges where they once were present. As discussed under Factor D in the "Summary of Factors Affecting the Species," the water regime of many waterfowl ponds is not consistent with the needs of the giant garter snake. Virtually no populations of the giant garter snake can be considered secure.

Comment: Several respondents proposed that Federal listing is not needed because 16 existing provisions of State law afford adequate protection for the species. Two commenters responded that State listing does not afford adequate protection, as evidenced by the destruction and continuing loss of over 90 percent of the wetlands throughout its range.

Service Response: Please refer to Factor D in the "Summary of Factors Affecting the Species" for a detailed discussion of this issue. One commenter listed numerous case histories that purportedly demonstrated successful resolution of impacts to the giant garter snake under State law. However, scrutiny of this list revealed that (1) many of the projects or proposals did not affect the species (J. Brode, pers. comm., 1992), (2) processing of permit applications has not yet progressed to the point that final conclusions can be made, and (3) many of the projects or proposals resulted in unmitigated adverse impacts to the species. Thus, State laws do not adequately protect the giant garter snake from threats facing this species.

Issue 3. Inadequate Public Participation

Comment: Several commenters asserted that the Service relied on information not available to the public and then attempted to prevent public participation in the rulemaking process by delaying the release of that information to preclude public comment within the prescribed comment periods.

Service Response: Service policy requires that all information relied upon by the Service in listing proposals be made available to the public upon request. The Freedom of Information Act (FOIA) provides additional requirements for releasing requested information to the public. The Service has provided all available information in response to such requests. Moreover, the Service provided appropriate public comment periods (see discussion at the beginning of this section) and a public hearing to ensure that all affected interests were provided sufficient opportunity to participate effectively in the public comment process. Consequently, the public was given adequate opportunities to comment on the proposal to list the giant garter snake.

Comment: One respondent, in reliance upon *Conservation Law Foundation v. Watt,* 560 F. Supp. 561 (D. Mass. 1983), and *Village of False Pass v. Watt,* 565 F. Supp. 1123 (D. Alaska 1983), claimed that the Service (1) was acting improperly by not awaiting the results of a particular field study on the distribution and abundance of the giant garter snake that was being prepared, and (2) in light of informational deficiencies on giant garter snake distribution and abundance, was obligated to conduct a "first class effort * * * to conduct requisite tests and studies." In the referenced cases, the courts held that Federal agencies must use the best scientific and commercial data available, including the final results of ongoing studies, prior to making any agency decision that may affect listed species. Other commenters claimed that the Service scheduled public comment periods to preclude consideration of results of the ongoing field study referenced above. Another respondent asserted that in the absence of an affirmative public pronouncement, the Service was erecting a *de facto* barrier to the initiation or completion of additional distribution and abundance studies because his clients had no confidence that the Service would reopen the public comment period if they began or attempted to complete such work.

Service Response: As discussed above, the Service reopened the comment period to ensure that the best available scientific and commercial information was considered in this final rulemaking. The Service also (1) contacted sponsors of the ongoing field study referenced above, after completion of their contractor's final report in October 1992, (2) solicited any relevant information, and (3) assured the sponsors that the Service was interested in reviewing the results of their study should they elect to submit additional information. The Service has incorporated information provided in that study into this final rule. In addition, the Service contacted the sponsors of other ongoing studies prior to release of final reports to ensure that the most recent information was considered in this listing action. The Service disagrees that *Conservation Law Foundation v. Watt* and *Village of False Pass v. Watt* obligate the Service to conduct requisite tests and studies after publication of a proposed rule. These cases involved consultation under section 7 of the Act, which allows time limitations to be extended by the action agency and Service upon mutual agreement, and to gather requisite information to complete the consultation. See 16 U.S.C. § 1536(b)(1)(B). In cases with substantial scientific disagreement regarding the sufficiency or accuracy of available data relevant to listing determinations (see 16 U.S.C. § 1533(b)(6)(B)(i) and 50 CFR 424.17(a)(1)(iv)), the Service may extend the 1-year review period between proposed and final rulemakings for the purposes of obtaining and reviewing additional information as may be necessary for making a final decision. As noted elsewhere in this rule, the Service has not received additional information indicating that the species is more widespread or under lesser threat than was previously believed. Thus, no scientific disagreement exists to support an extension.

Issue 4. Economic Effects

Comment: One commenter reminded the Service of its obligations under Executive Order 12630, which requires Federal agencies to prepare takings implication statements on actions with potential to violate the Fifth Amendment of the Constitution.

Service Response: Regarding Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, the Attorney General has issued guidelines to the Department of the Interior (Department) on implementation of the Executive Order. Under these guidelines, a special rule applies when an agency within the Department is required by law to act without exercising its usual discretion—that is, to act solely upon specified criteria that leave the agency no discretion.

In this context, an agency's action might be subject to legal challenge if it did not consider or act upon economic data. Therefore, in these cases, the Attorney General's guidelines state that Takings Implications Assessments (TIAs) shall be prepared after, rather than before, the agency makes the decision upon which its discretion is restricted. The purpose of TIAs in these special circumstances is to inform policymakers of areas where unavoidable taking exposures exist. Such TIAs shall not be considered in the making of administrative decisions that must, by law, be made without regard to their economic impact. In

enacting the Act, Congress required the Department to list species based solely upon scientific and commercial data indicating whether or not they are in danger of extinction. The Act does not allow the Service to withhold a listing based on concerns regarding economic impact. The provisions of the guidelines relating to nondiscretionary actions clearly are applicable to the determination of threatened status for the giant garter snake.

Comment: Numerous comments asserted that listing the giant garter snake would threaten the ability of flood control and other districts to perform necessary maintenance of levees, thereby jeopardizing public health and safety.

Service Response: Although the Service is limited in its ability to predict with certainty the measures needed to conserve the species in all situations involving levee and canal maintenance activities, past experience with other listed species impacted by such practices indicates that the commenters' fears have seldom, if ever, materialized. Flood control projects generally involve Federal permits or sponsors, and are reviewed by the Service under section 7 of the Act (see "Available Conservation Measures" below). In practice, the Service usually completes biological opinions within 90 days of receipt of a request for formal consultation. In addition, if the Service determines that an action would jeopardize the continued existence of a federally listed species, in most cases it recommends reasonable and prudent alternatives that allow the intended purpose of the project to proceed, with modifications. The Service has a well established record of working cooperatively with flood control and related districts in designing maintenance procedures that accommodate the habitat requirements of the species yet do not impinge on the ability of other agencies to fulfill their charges. The Service is confident that Federal listing will contribute to the survival and scientific understanding of the species and its environment without jeopardizing public health and safety.

Comment: Several commenters suggested that the proposed listing may impact the ability to accomplish water exchanges and transfers and restrict operations of the State Water Project. Due to that, there may be a significant negative impact on agricultural lands that rely on water for irrigation. In a related argument, one commenter alleged measures needed to conserve the giant garter snake would conflict directly with the instream water requirements of the Sacramento River population of the winter run chinook salmon (*Oncorhynchus tshawytscha*), listed as a threatened species by the Federal Government and as an endangered species by the State of California. Due to controversies and economic effects associated with this issue, the commenter contended that the Service was obligated to prepare an environmental impact statement for the proposed listing, pursuant to the National Environmental Policy Act (NEPA).

Service Response: Though the Service disagrees that listing necessarily would lead to the impacts and conflicts raised by these commenters, the Service is precluded from considering such impacts or conflicts while assessing any of the five factors listed at section 4(a)(1)(b) of the Act. The Service believes that the reasons provided in the **Federal Register** notice published on October 25, 1983 (48 FR 49244) determining that an environmental impact statement need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act are valid.

Comment: Several commenters responded that Federal listing would (1) place pressure on the agricultural industry to grow alternative crops to rice in an effort to avoid Federal restrictions associated with the Act, (2) reduce land values, and (3) lead to future economic losses, which cumulatively would adversely affect the future viability of the species.

Service Response: The Act directs the Service to base listing decisions solely on the best scientific and commercial information available; thus, the Act prohibits such economic considerations.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the giant garter snake (*Thamnophis gigas*) should be classified as a threatened species. Procedures found in section 4 of the Endangered Species Act (16 U.S.C. § 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the giant garter snake (*Thamnophis gigas* Fitch) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Regardless of the extent of wetlands currently remaining, field studies (Hansen 1986, Hansen 1988, Beak 1992) indicate that the species is absent from most areas with seemingly suitable habitat (see discussions under Factors B, C, and E).

A number of land use practices and other human activities currently threaten the survival of the giant garter snake throughout its remaining range. Although some giant garter snake populations have persisted at low population levels in artificial wetland associated with agricultural and flood control activities, many of these altered wetlands are now threatened with urban development. Examples of these activities include: a new city proposed in San Joaquin County would threaten known or potential habitat for the Badger/Willow Creek population; the Sacramento Metropolitan Area Investigation, a 400-year flood protection project proposed by the Corps and local governments for over 3,240 hectares (8,000 acres) of agricultural lands and open space (USFWS, unpubl. information) would threaten an estimated 45 km (28 mi) of small waterway habitat potentially inhabited by portions of the Yolo Basin/Willow Slough population of the giant garter snake; in the Laguna Creek-Elk Grove region of Sacramento County, 11 proposed residential developments and associated stream channelization projects would threaten portions of the Sacramento Basin population.

In addition, several cities within the current range of the giant garter snake are expanding. Rapidly expanding urban areas within or near the historic range of the giant garter snake include, but are not limited to, Chico (Butte Basin population), Yuba City (Sutter Basin population), Sacramento (American and Sacramento Basin populations), Galt (Badger/Willow Creek population), Stockton (East Stockton population), and Gustine and Los Banos (North and South Grasslands population). Numerous city and county governments recently have updated or amended their General Plans to facilitate urban growth. The North Delta Water Management project proposed by the California Department of Water Resources would facilitate urban development and adversely affect the Sacramento Basin population; Corps American River Watershed Investigation or local equivalent would facilitate urban growth that may adversely affect the American Basin population; Sacramento River Flood Control Project, Phase II—Marysville/Yuba City Area, and Yuba River Basin project would facilitate urban growth in the vicinity of the Sutter Basin population; and Department of Water Resources' North Delta Water Management Project would

facilitate urban growth in the vicinity of the Sacramento Basin population.

The largest extant population of the giant garter snake inhabits extensive agricultural lands in the American Basin, a large flood basin at the confluence of the Sacramento and American Rivers, in Sacramento and Sutter Counties. Throughout this area, reconnaissance level surveys (USFWS 1991) indicate that about 570 hectares (1,400 acres) of giant garter snake habitat exist in the form of man-made irrigation channels and drainage ditches, as well as an undetermined acreage of suitable habitat within approximately 5,260 hectares (13,000 acres) of adjoining rice fields. The giant garter snake also uses an undetermined amount of habitat at higher elevations to escape from winter flooding during the inactive winter phase of the snake's life cycle. However, as discussed under Factor E, the amount of land in rice production varies from year to year; consequently, this area does not contain stable habitat.

Habitat supporting the giant garter snake in the American Basin is threatened by a number of activities, primarily expanding urbanization. The Corps and/or local project sponsors are proposing flood protection for this 22,260-hectare (55,000-acre) agricultural area. The Service (USFWS 1991) anticipates that the provision of flood control would result in the conversion of most or all of this area to urban land uses within the next 50 years. Other projects in the American Basin include the North Natomas Community Drainage System and associated urban development, proposed by the City of Sacramento, which affect about 42 km (26 mi) of giant garter snake habitat along existing canals and ditches, and additional rice field habitat (Brode and Hansen 1992); the proposed Sutter Bay project, at the north end of the American Basin, could eliminate or degrade about 68 km (42 mi) of suitable canals (Brode and Hansen 1992) and thousands of hectares of associated rice fields and giant garter snake habitat; the proposed South Sutter Industrial Center, located near the Sutter Bay project, could eliminate another 14.5 km (9.0 mi) of aquatic habitat and associated rice fields; a new city proposed in Sutter County also would adversely affect the American Basin population; and the Sacramento Metropolitan Airport is proposing about 765 hectares (1,890 acres) of development on agricultural and vacant lands that could result in major adverse impacts to the species, including the loss of about 14.5 km (9.0 mi) of canal habitat and 607 hectares (1,500 acres) of rice fields, as well as the disruption of movement corridors (Brode and Hansen 1992). Roadway improvements or construction projects, or the planned extension of the Sacramento Regional Transit system in this area, would likely result in elevated mortality from increased traffic on local roads and highways (Brode and Hansen 1992).

Certain agricultural practices can destroy habitat that supports the giant garter snake. For example, intensive vegetation control activities along canal banks can fragment and isolate available habitat (See Factor E below). In addition, Hansen (1982, 1986), G. Hansen (pers. comm. 1992), and J. Brode (pers. comm. 1992) have observed livestock grazing threats to four populations of the species. Studies on other garter snake species have established a negative cause and effect relationship between livestock grazing and snake population demographics (Szaro *et al.* 1989). The giant garter snake requires dense vegetative cover in proximity to waterside foraging and basking habitats in which to seek refuge from predators and other forms of disturbance. Livestock grazing along the edges of water sources degrades habitat quality by reducing vegetative cover. Overall, grazing has contributed to the elimination and reduction of the quality of available habitat at four known locations.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although giant garter snakes do not seem to be of great interest to reptile collectors, the species has been found for sale in pet shops (J. Brode, pers. comm., 1991). However, collection for commercial purposes does not appear to threaten the giant garter snake.

Collection and harassment associated with recreational activities apparently cause a substantial impact in certain areas. Recreationists can disturb basking snakes and, thus, interfere with thermoregulatory behavior. Angling pressure at the Mendota population during the 1970's and 1980's resulted in numerous observed instances of road kills and other possible killing and injuring of giant garter snakes (J. Brode, pers. comm., 1992; G. Hansen, pers. comm., 1992; R. Hansen, biological consultant, pers. comm., 1992). In the American Basin, collection of crayfish for human consumption also results in harassment of giant garter snakes (G. Hansen, pers. comm., 1992). Disturbance and harassment associated with fishing pressure also is implicated in the demise of the giant garter snake population at Burrell (G. Hansen, pers. comm., 1992).

C. *Disease or predation.* Little information on diseases that affect the giant garter snake is available. CDFG ceased mark and recapture studies on the giant garter snake in the American Basin after observing that marked snakes were slow to heal and often became infected (J. Brode, pers. comm., 1992; G. Hansen, pers. comm., 1992).

Unidentified parasitic worms have been found in giant garter snakes from the American Basin population (Hansen, *in litt.*, 1992). Infected snakes exhibited reduced appetites and growth rates compared to uninfected snakes, and all infected snakes eventually died after lingering malaise, although some reached 12 to 14 months of age. Upon death, uniformly sized 5- to 8-cm (2- to 3-inch) worms, the thickness of a replacement pencil lead and colored with alternating narrow rings of red and beige, emerged from noticeable lumps at any location along the ventral or dorsal skin surfaces. The degree of threat posed by these worms to the American Basin population or the species throughout its range is not known.

Predation levels on the giant garter snakes have increased due to a number of factors. A number of native mammals and birds are known or likely predators of giant garter snakes, including raccoons, skunks, opossums, foxes, hawks, egrets, and herons. The abundance and diversity of predators and a paucity of escape cover in remaining giant garter snake habitat suggest that predation pressure on this species probably is severe (Hansen 1980). The high fecundity (Hansen and Hansen 1990) and extremely wary behavior (Hansen 1980 and references cited therein) of the species provide additional evidence that the species has developed physiological and behavioral adaptations to help withstand predatory pressure. Hansen (1986) observed that nearly all giant garter snakes captured and examined possessed scars or recent injuries presumably acquired during attacks by predators.

Domestic cats prey upon the giant garter snake. G. Hansen (pers. comm., 1992), has observed numerous snake kills by domestic cats in one of his longtime study areas about 3.2 km (2 miles) from the closest urban development in the City of Davis, Yolo County.

Few, if any, native fish species posed a predatory threat to the giant garter snake. However, introduced largemouth bass and catfish are voracious, opportunistic predators of many species of invertebrates, fish, reptiles, amphibians, birds, and small mammals, and have become established in virtually all permanent and semi-

permanent waters throughout the Central Valley (Dennis Lee, CDFG, pers. comm., 1992). These introduced predatory fishes have been responsible for eliminating many species of native fishes and aquatic vertebrates in the western United States (Minkley 1973, Moyle 1976).

Bass in the 0.4- to 1.4-kilogram (1- to 3-lb) size class can take 30- to 38-cm (12- to 15-in) snakes and would prey upon giant garter snakes (Dennis Lee, pers. comm., 1992). The instinctive response of giant garter snakes to dive under water upon disturbance (Fitch 1941) would be maladaptive where non-native predatory fish have become established. Parmley and Mulford (1985) reported an instance of a largemouth bass eating a water snake. Introduced predatory fish may explain the absence of garter snakes from large bodies of water (Brode 1988). Brode (1988) believed that the giant garter snake was absent from large bodies of water due to the presence of introduced predatory fishes.

Introduction of the bullfrog (*Rana catesbeianna*) to virtually all areas inhabited by the giant garter snake further increases the threat of predation facing the species. The spread of bullfrogs has contributed to the demise of numerous species of native amphibians and reptiles (S. Sweet, Univ. Calif. at Santa Barbara, *in litt.*, 1992; Schwalbe and Rosen 1989, Holland 1992). Bury and Whelan (1984) cited 14 cases of bullfrogs eating snakes. These studies documented (1) bullfrog ingestion of garter snakes up to 80 cm (31.5 in) in length, (2) depletion of garter snake age class structure less than 80 cm length (snout-vent), and (3) disappearance and resurgence of garter snake populations coincident with the introduction and decline of bullfrog populations. Schwalbe and Rosen (1989) concluded that bullfrogs have a high potential for eliminating garter snake populations. Treanor (1983) found that unidentified garter snakes (*Thamnophis spp.*) comprised 6.0 and 6.4 percent volume of bullfrog stomach contents in the months of July and August at Gray Lodge Waterfowl Management Area, a known giant garter snake location.

D. *The inadequacy of existing regulatory mechanisms.* The National Environmental Policy Act and section 404 of the Clean Water Act represent the primary Federal laws that could afford some protection for the giant garter snake. These laws, however, do not protect candidate species *per se.* Under section 404 of the Clean Water Act, the Corps regulates the discharge of fill material into waters of the United States, which include navigable and isolated waters, headwaters, and adjacent wetlands.

Pursuant to 33 CFR part 323.4, the Corps also has promulgated regulations that exempt various farming, forestry, and maintenance activities from the regulatory requirements of section 404. Many of the irrigation and drain water canals and other agricultural wetlands, such as rice fields that provide giant garter snake habitat, are not subject to section 404 regulation. For example, in the recent jurisdictional determination for the American River Watershed Investigation, the Corps found that of the 373 km (232 mi), totalling 515 hectares (1,272 acres) of canal and waterway habitat in the American Basin, 153 hectares (379 acres) constituted jurisdictional wetlands.

The section 404 regulations require that applicants obtain an individual permit to place fill for projects affecting greater than 10 acres of waters. Nationwide Permit Number 26 (NWP 26) (33 CFR part 330) was established by the Corps to facilitate issuance of permits for discharges of fill material into isolated waters that cause the loss of less than 10 acres of waters, and that cause only minimal individual and cumulative environmental impacts. Projects that qualify for authorization under NWP 26 and that affect less than 1 acre of isolated waters or headwaters may proceed without notifying the Corps. Corps District and Division Engineers may require that an individual section 404 permit be obtained if projects otherwise qualifying under NWP 26 would have greater than minimal individual or cumulative environmental impacts. However, the Corps has been reluctant to withhold authorization under NWP 26 unless the existence of a listed species would be jeopardized, regardless of the significance of the affected wetland resources. The Corps cannot issue a nationwide or individual permit where a federally listed species would be affected without first consulting with the Service under section 7 of the Endangered Species Act.

The giant garter snake was listed as a threatened species by the State of California in 1971. The California Environmental Quality Act and California Endangered Species Act are the primary environmental legislation at the State level that potentially benefit the giant garter snake. Certain city and county governments have adopted protective measures and ordinances that under certain circumstances could afford additional levels of protection for the giant garter snake. However, numerous cities and counties have not adopted protective mechanisms, and many of the threats to the species are not amenable to remediation at the State or local level because they are related to natural processes or catastrophes, contaminants, introduction of and predation from alien species, and ongoing economic uses of private lands. These threats fall beyond the application of State planning laws that address proposed changes in land uses.

Although State laws and local ordinances can provide a measure of protection to the species and have resulted in the formulation of mitigation measures to reduce or offset impacts for projects proposed in certain areas, these laws have not adequately protected the species. Numerous activities do not fall under the purview of State and local governments, such as certain projects proposed by the Federal government and projects falling under State statutory exemptions. For example, pursuant to section 2081 of the State Fish and Game Code, CDFG has not required permits for numerous activities that result in take of giant garter snakes (see the examples below). Where overriding social and economic considerations can be demonstrated, these laws allow project proposals to go forward, even in cases where the continued existence of the species may be jeopardized, or where adverse impacts are not mitigated to a point of insignificance.

Project-specific examples of the limitations associated with State law include: (1) Strawberry Creek Realignment—existing wetland habitat was destroyed prior to creation of new replacement habitat, contrary to agreed upon mitigation measures; (2) Caltrans State Route 99/70 widening project—mitigation measures agreed upon under the State Endangered Species Act still have not successfully replaced habitat losses along 32 miles of canal habitat 3 years after construction and completion of the project; (3) over 0.5 miles of known giant garter snake habitat at Fishermen's Lake was graded and eliminated by Reclamation District 1000 through channel maintenance practices and in response to a cleanup order from the Sacramento County Health Department (based on information provided by Reclamation District 1000, continued annual grading to maintain water conveyance and abate the apparent health menace is anticipated to prevent reestablishment of giant garter snake habitat in the future); (4) according to CDFG information, the City of Sacramento permitted development to proceed under the North Natomas Community Plan, even though habitat replacement to mitigate giant garter

snake habitat losses was deferred to approval and construction of another project—North Natomas Community Drainage System—which has not yet occurred (over 5 years after the fact) and reportedly did not require the mitigation measures deferred from the previous project; (5) numerous Negative Declarations were filed by the City of Sacramento for projects affecting giant garter snake habitat within the North Natomas Community Plan, which relied on later implementation of mitigation measures that have not yet been enacted; (6) the Negative Declaration for the now constructed Coral Business Center did not require measures to offset the permanent loss of about 5 acres of giant garter snake habitat; (7) total elimination in 1992 of documented giant garter snake habitat from channel maintenance practices along over 2 miles of canal habitat bordering Block Road in Butte County; (8) dredging and filling of Elk Grove Creek and Laguna Creek resulted in substantial habitat losses for a known giant garter snake population for which no mitigation measures were required by any level of government; (9) from 1978 to 1979, approximately 280 acres of known giant garter snake habitat were eliminated without replacement by Caltrans during construction of Interstate 5 at the State Route 12 intersection; (10) approved mitigation measures for the South Sutter County General Plan do not offset adverse impacts to the giant garter snake (mitigation was deferred to completion of a regional habitat conservation plan sponsored by the Sacramento Area Flood Control Agency, planning for which has been at least temporarily abandoned); (11) the adopted Sutter Bay Village Specific Plan, the Negative Declaration for Sutter Bay Boulevard Interchange on Route 99, and the Negative Declaration for the Sutter Bay Country Club, deferred mitigation to the now abandoned regional planning effort referenced above; (12) Laguna Creek flood control project—known or likely giant garter snake habitat was eliminated prior to replacement of suitable habitat (recreated habitat has not yet been shown to be suitable for or occupied by the species); (13) in the 1970's, approximately 24 hectares (60 acres) of known giant garter snake habitat was eliminated by excavation and freeway construction for Interstate 5 at Beach Lake in Sacramento County; (14) within the last few years, 0.8 km (0.5 mi) of documented giant garter snake habitat was scraped along the East Drainage Canal near the intersection of Interstates 5 and 80; (15) in 1990, about 4 km (2.5 mi) of documented giant garter snake habitat was eliminated by construction of a new channel bordering the south side of the Cross Canal at the Highway 70/99 crossing in Sutter County; and (16) construction of Del Paso Boulevard interchange with Interstate 5 in the American Basin eliminated giant garter snake habitat without successful replacement.

Portions of four giant garter snake populations currently occur or formerly occurred on six State and Federal refuges managed for wildlife purposes: Gray Lodge Waterfowl Management Area, Kesterson National Wildlife Refuge (NWR), Delevan NWR, San Luis NWR, Los Banos Wildlife Area, and Mendota Waterfowl Management Area. For a variety of reasons, little if any giant garter snake habitat on these refuges can be considered secure. The presence of giant garter snakes on these refuges typically is known from one or two older records, and the current status of the giant garter snake is uncertain. Recent surveys (Beak 1992) of four of these refuges in addition to Sacramento NWR failed to detect the species. Only Gray Lodge Waterfowl Management Area has a record within the last 15 to 20 years (T. King and J. Brode, pers. comm., 1992).

Giant garter snakes require water during the active phase of their life cycle in the summer, not during the winter while they remain inactive underground. Many waterfowl areas are managed to provide water during the winter and spring months, and are drained during the summer months. Permanent water on these refuges that provides suitable giant garter snake habitat generally supports populations of largemouth bass or other non-native predatory fish, as well. However, it is likely that some refuges could be managed to support waterfowl and garter snakes.

Potential benefits to the garter snake exist through the establishment of additional waterfowl refuges through the Central Valley Joint Venture, provided that management efforts consider the needs of giant garter snakes.

E. *Other natural or manmade factors affecting its continued existence.* In rice production areas of the American Basin, the largest remaining population of giant garter snakes inhabits water management facilities adjoining rice fields (in rare instances the snake occurs along other agricultural waterways). The seasonal flooding and draining of rice ponds may provide an adequate forage base and may prevent establishment of populations of large predatory fish (Brode and Hansen 1992).

However, Pacific Environmental Consultants (1992) cites sources that document 250,000-acre swings in rice production over a 3-year time span, which suggests that these situations do not represent stable conditions for associated giant garter snake populations. Rice production varies depending upon market conditions (e.g., Department of Agriculture price support programs), and water availability for agriculture (e.g., State Water Resources Control Board Draft Interim Water Rights Decision (D–1630) protects estuarine fisheries values by reducing winter and spring exports from the Delta, which could result in reduced acreage of rice production).

Furthermore, intensive control of vegetation along water delivery and drainage facilities eliminates remaining habitat and prevents reestablishment of former habitat (Hansen 1988; Brode and Hansen 1992; G. Hansen, pers. comm., 1992; J. Brode, pers. comm., 1992). For example, more intensive maintenance practices have eliminated habitat along water canals in the American Basin along State Route 70/99 (CDFG, unpublished information; J. Brode, pers. comm., 1992). Such activities can kill or injure snakes, remove critical escape cover, eliminate prey populations, and destroy small mammal burrows and other soil fissures needed as winter retreat habitat. Beak (1992) documented two giant garter snakes killed apparently by levee maintenance or farming equipment. G. Hansen (pers. comm., 1992) has observed the complete elimination of suitable habitat from maintenance practices along both sides of canals where giant garter snakes were found the previous season.

The giant garter snake is vulnerable to changes in water management, because it depends on the availability of wetlands. In response to Statewide water shortages associated with drought, water management agencies, including the California Department of Water Resources and U.S. Bureau of Reclamation, announce reductions in delivery of water to certain agricultural regions (Grubb 1991). In addition, the Department of Water Resources has begun acting as a broker to facilitate transfer of water from users with discretionary supplies to those with critical needs (Schnitt 1991). Water districts from around the State are offering to purchase water from water districts in rice production regions of the Sacramento Valley (Schnitt 1991).

Contaminants, such as fertilizers and pesticides, could adversely affect giant garter snake populations by degrading water quality and reducing prey populations. Selenium contamination of

agricultural drainwater appears to pose a severe threat to any giant garter snake population that still may inhabit the Grasslands region of western Merced County in the San Joaquin Valley. High levels of selenium contamination have been documented in biota from at least six major canals and water courses in the Grasslands (Saiki *et al.* 1991, 1992) that have historic giant garter snake records. The bioaccumulative food chain threat of selenium contamination on fish, frogs, and fish-eating birds in this region has been well documented (Ohlendorf *et al.* 1986, 1988; Saiki and Lowe 1987; Saiki and May 1988; Hothem and Ohlendorf 1989; Saiki *et al.* 1991, 1992, 1993). Contaminant studies on aquatic organisms and their habitats in the Grasslands and neighboring areas documented elevated levels of waterborne selenium in many representative water bodies in this region that exceeded known toxicity thresholds for giant garter snake prey species (San Joaquin Valley Drainage Program 1990, Central Valley Regional Water Quality Control Board 1992, Hermanutz 1992, Hermanutz *et al.* 1992, Hermanutz *in litt.* 1992, Nakamoto and Hassler 1992). Elevated salinities of waters in the Grasslands due to a sodium sulfate based salt also have been documented at deleterious levels in resident fishes and amphibians (Ohlendorf *et al.* 1986, 1988; Saiki *et al.* 1992), the major food source of giant garter snakes.

Most or all giant garter snake populations also are vulnerable to adverse effects from flooding. A 100-year flood event represents a threat that could extirpate all remaining populations. Many areas, such as in the rice production districts of the Sacramento Valley, flood more frequently, even during winters with normal levels of rainfall. In Glenn and Colusa Counties, Willow Creek, Walker Creek, French Creek, Wilson Creek, Logan Creek, Hunter Creek, Lurline Creek, and the 2047 Drain all flood to depths exceeding the levee tops (L. Rauen, pers. comm., 1993). In eastern Sutter County, many creeks convey water to depths 1 to 2 feet above levee tops (Larry Rauen, pers. comm., 1993.). These flooding events may account, at least in part, for the apparent absence of the giant garter snake in many rice production districts.

Giant garter snakes seek refuge in habitat at higher elevations where they retreat during the winter dormancy period. Commercial development, agricultural conversion, and levee/channel construction and maintenance along the edges of wetlands have eliminated much of the retreat habitat, forcing giant garter snakes to overwinter in flood-prone (streamside) levee slopes.

Habitat loss throughout the range of the giant garter snake has resulted in fragmented and isolated habitat remnants. Such small populations confined to limited habitat areas are likely vulnerable to extirpation from stochastic (random) environmental, genetic, and demographic events (Schonewald-Cox *et al.* 1983). When an existing population becomes extinct, there is virtually no chance of recolonization from any remaining populations. In addition, the breeding of closely related individuals can cause genetic problems in small populations, particularly the expression of deleterious genes (known as inbreeding depression).

In overview, 3 of the 13 populations discussed in the Background section are not imminently threatened with extirpation. The three populations are located in the Butte, Sutter, and Colusa Basins. Although long-term potential threats to these populations have been identified (e.g., changing land use practices, and/or uncertain water supplies), giant garter snakes in these areas are at risk of becoming endangered, but not extirpated, in the foreseeable future.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the giant garter snake in determining to make this final determination. Based on this evaluation, the Service concludes that the giant garter snake is threatened with extinction throughout the San Joaquin Valley, portions of the eastern fringes of the Delta, and the southern Sacramento Valley, an area encompassing about 75 percent of the species' geographic range. The Service finds that the species warrants listing as threatened based on known or potential threats throughout a significant portion of its range. Critical habitat is not being designated for this species for reasons discussed below in the "Critical Habitat" section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that designation of critical habitat presently is not prudent and would not benefit the giant garter snake. The giant garter snake occurs or formerly occurred on about six wildlife refuges managed by the Service or California Department of Fish and Game. These agencies are aware of the presence of the species and, upon listing, the Service will expand coordination efforts to protect the giant garter snake in these areas. However, most populations on private lands typically contain low numbers of individuals and occur in small patches of variable quality habitat. This situation renders the species vulnerable to acts of vandalism or collection, which could deplete population levels and cause irreparable harm. Many locality records occur in water delivery/drainage canals in which water levels readily can be managed to eliminate giant garter snake habitat. In response to publication of the proposed rule, several commenters informed the Service that landowners were likely to take rice lands out of production in an effort to rid their land of giant garter snakes and thereby avoid reduced land values and increased future economic losses. Accordingly, publication of maps and precise descriptions delineating critical habitat areas would increase the likelihood of land use changes, increased collection, or habitat vandalism in violation of section 9 of the Act.

As discussed above under Factor D, many of the artificially created habitats inhabited by giant garter snakes, such as irrigation and drainage canals, do not fall under Federal jurisdiction. Absent jurisdiction by Federal agencies, designation of critical habitat on private land does not afford additional protection to listed species beyond that provided under section 9 of the Act. Where Federal jurisdiction does extend to populations on private lands, habitat protection will be addressed through the recovery process and formal consultation requirements under sections 4 and 7 of the Act, respectively. Therefore, the Service finds that designation of critical habitat is not prudent at this time because such designation would increase the likelihood of habitat vandalism and take and because it is unlikely to benefit (aid the conservation of) the giant garter snake.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and

require that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Giant garter snake populations inhabiting some wetlands on private and public lands would fall under the regulatory jurisdiction of the Corps, pursuant to section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act. As described under Factor A above, numerous commercial developments currently are proposed in known and likely giant garter snake habitat. Pursuant to 33 CFR part 330.5(b)(3), project proposals in giant garter snake habitat otherwise allowed under nationwide permit authority would be subject to scrutiny under section 7 of the Endangered Species Act and imposition of special permit conditions needed to avoid and/or offset impacts incurred by the projects. Pursuant to 33 CFR part 325, individual permits, letters of permission, and regional permits issued by the Corps also would be subject to consultation requirements under section 7 of Act. In addition, water development projects proposed by Federal agencies, such as the Department of the Army and U.S. Bureau of Reclamation, would fall under the purview of section 7 of the Act. The American River Watershed Investigation, Sacramento Metropolitan Area Investigation, and the Merced County Streams project, among other Federal project proposals, will be reviewed pursuant to section 7 of the Act. Habitat manipulation and recreational activities on State or federally owned waterfowl management areas may be affected by the regulatory requirements of sections 7, 9, and 10 of the Endangered Species Act.

The Act and its implementing regulations found at 50 CFR 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. Requests for information on permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203–3507 (703/358- 2093).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of the references cited herein is available upon request from the Sacramento Field Office (see **ADDRESSES** section).

Author

The primary author of this rule is Peter C. Sorensen, Sacramento Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Final Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under REPTILES, to the list of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
REPTILES							
Snake, giant garter ..	*Thamnophis gigas* ...	U.S.A. (CA)	Entire	T	522	NA	NA

Dated: September 27, 1993.
Richard N. Smith,
Acting Director, U.S. Fish and Wildlife Service.
[FR Doc. 93-25741 Filed 10-19-93; 8:45 am]
BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 910779-2317; I.D. 092493D]

Sea Turtle Conservation; Approved Turtle Excluder Devices

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.
ACTION: Final rule, technical amendment.

SUMMARY: NMFS issues this final rule, technical amendment to amend the regulations listing turtle excluder devises (TEDs) approved for use in trawl fisheries to reduce the incidental capture of endangered and threatened sea turtles. This final rule, technical amendment creates a new category of hard TEDs called "special hard TEDs", which do not conform to the generic design criteria for hard TEDs, but nevertheless meet the approval criteria of the NMFS TED testing protocols. This amendment also lists two TEDs, the Flounder TED and the Jones TED, as special hard TEDs.

DATES: Effective October 15, 1993.

FOR FURTHER INFORMATION CONTACT: Phil Williams, National Sea Turtle Coordinator (301-713-2319) or Charles A. Oravetz, Chief, Protected Species Program, NMFS, Southeast Region (813-893-3366).

SUPPLEMENTARY INFORMATION:

Background

Regulations at 50 CFR 227.72 (57 FR 57348, December 4, 1992) require, with certain exceptions, that shrimp trawlers in the southern Atlantic and Gulf of Mexico have NMFS-approved TEDs installed in nets rigged for fishing; TEDs are devices designed to allow sea turtles caught in trawl nets to escape. These regulations also provide for restrictions, including the required use of TEDs, on vessels in other fisheries, under certain circumstances. Specifically, for example, NMFS promulgated an interim rule requiring vessels in the mid-Atlantic Summer Flounder Fishery to use TEDs (58 FR 48797, September 20, 1993).

The regulations currently allow the use of hard TEDs, which have rigid deflector grids and meet specified generic design criteria, and soft TEDs, which have deflector panels made from polypropylene or polyethylene webbing and meet specified standards of construction and installation.

Although TEDs designed according to the generic standards (50 CFR 227.72(e)(4)(i)) may be applicable for use in other fisheries where TEDs are required, the hard TEDs which satisfy these standards have been largely developed for use in shrimp trawl nets. TED use is now required in the Atlantic summer flounder bottom trawl fishery pursuant to the interim rule. The Atlantic summer founder bottom trawl fishery uses larger nets constructed from much heavier webbing than the shrimp trawl fishery, trawls at faster speeds and encounters bycatch, such as conch and small sharks, which can cause standard hard TEDs to work inefficiently or clog, or even collapse under some conditions.

The existing TED regulations provide for revisions of the hard TED generic design criteria, allowable modifications to hard TEDs, and the addition of new soft TED designs, if, according to a NMFS-approved scientific protocol, the TEDs demonstrate a sea turtle exclusion rate of 97 percent or greater (or an equivalent exclusion rate) (50 CFR 227.72(e)(5)). Two protocols have been published by NMFS and are currently being used for TED testing (52 FR 24262, June 29, 1987 and 55 FR 41092, October 9, 1990). However, the regulations make no provision for new hard TED designs that comply with a NMFS-approved protocol and meet the test criteria.

This technical amendment modifies the existing regulations to allow for the approval of new hard TED designs that are tested pursuant to a NMFS-approved protocol and meet the test criteria; the amendment creates a new category of hard TEDs called "special hard TEDs." These TEDs are designed for specific applications and may not strictly adhere to the generic design criteria, although they meet the approval criteria.

This technical amendment also recognizes that two TEDs, the Flounder TED and the Jones TED, have been approved as special hard TEDs, based on tests conducted pursuant to the NMFS-approved scientific protocol described at 55 FR 41092 (October 9, 1990). The Flounder TED has been designed, tested and is approved for use in the Atlantic summer flounder bottom trawl fishery. The Jones TED may be used in any fishery where TEDs are required.

The Flounder TED is an upward deflecting device, designed strictly for use only in the Atlantic summer flounder bottom trawl fishery. It differs from the generic hard TED specifications in that it incorporates two openings, each no larger than 10 inches by 14½ inches (25.4 cm × 36.8 cm), at the bottom of the TED. This greatly exceeds the bar spacing allowed (4 inch, 10.2 cm) in other single-grid TEDs. It also has a minimum length (51 inches, 129.5 cm) which is much larger than the minimum required for a generic hard TED (28 inches (71.1 cm) in the Gulf of Mexico and 30 inches (76.2 cm) in the Atlantic).

The Jones TED is designed as an upward or downward deflecting device for use in the shrimp and other fisheries where TEDs are required. It differs from the generic hard TED specifications in that the deflector bars do not run from top to bottom of the TED, but extend, at a 45° angle, from each side of the TED. It also differs in that the deflector bars are only connected at one end to the TED frame and the maximum bar spacing on the upper bars is 3½ inches (8.9 cm), and on the lower three bars is 2½ inches (6.4 cm). The Jones TED is anticipated to be especially useful in a bottom opening configuration where algae, grass, and debris clog other types of TEDs.

Although the hard TED generic design criteria allow for the use of steel, aluminum, or fiberglass rod and steel or aluminum tubing, both of these TEDs must be constructed of aluminum or steel pipe with a minimum outside diameter of 1¼ inch (3.2 cm) and a minimum wall thickness of ⅛ inch (0.3 cm). Both the Jones and Flounder TEDs must be installed, according to the generic hard TED requirements, with certain specific exceptions, and must have escape openings which meet the requirements for generic single-grid hard TEDs.

TED Testing

The Flounder TED is a large, rectangular, single-grid hard TED which is installed in the trawl angled upwards to an exit opening at the top of the net ahead of the extension. It has two openings at the bottom to allow small sharks, large shelled mollusks, such as conch, and rocks to pass into the cod end of the trawl. The Jones TED is a single-grid TED, oval in shape with a flattened bottom, which is installed in the trawl ahead of the extension. The Jones TED has diagonal bars attached only at one end to the frame to allow vegetation to slide off the bars into the cod end of the net.

Both TEDs were tested by NMFS at Panama City, Florida, in May and June 1993. The TED testing protocol consisted of two parts:

(1) Qualification tests, videotaped by NMFS scuba divers, of head-started loggerhead turtle releases [25.7 cm to 34.9 cm (31.6 cm mean) straight line carapace length] from TED-equipped nets; and

(2) An evaluation of all test results by a panel of industry and Sea Grant representatives and sea turtle experts.

The NMFS TED previously approved and found to be 97-percent effective in releasing sea turtles was used as the control; i.e., both the Flounder TED and the Jones TED had to meet or surpass the exclusion rate achieved by the NMFS TED.

Due to the small number of turtles available, the NMFS TED was tested in 1993 with only 10 turtles. During these tests the NMFS TED released 10 out 10 turtles. To increase the sample size, the 1993 data were combined with turtle release data from the NMFS TED for 1991 and 1989. During testing in these three years, the NMFS TED released 54 turtles out of 60 introduced, setting the performance standard. Based upon the protocol for the 1993 tests, it was statistically determined that a TED could be approved if it excluded at least 21 out of 25 turtles.

The Flounder TED released 21 out of 25 turtles which met the approval criteria. It was tested with one horizontal bar and a 4-inch opening at the top of the TED. No accelerator funnel was used. No turtles passed through the large (10" x 14½", 25.4 cm x 36.8 cm) openings in the bottom of the TED. The review panel, however, recommended that the TED be approved with the top horizontal bar removed, as it appeared to hinder the release of some turtles. The panel also recommended that the Flounder TED be approved only for installation as a top excluding TED, only for use without an accelerator funnel, and only for use in the Atlantic summer flounder bottom trawl fishery. The recommendations for an installation limitation and a prohibition on use of an accelerator funnel were made to enhance turtle exclusion. The recommendation for allowing use only in the Atlantic summer flounder fishery was based on the original purpose and design of the TED for use in this fishery, and the concern that small-sized Kemp's Ridley turtles may be encountered by the shrimp fishery and that such turtles may pass through the 10-inch (25.4 cm) bottom space of the grid. The review panel's recommendations were adopted.

The Jones TED released 21 of 23 turtles introduced into the net. The two turtles that were not released passed directly through the space between the lower bars of the TED and into the cod end of the trawl. The panel recommended approving this TED under the condition that the space between all bars be reduced to a size that would prevent small turtles from passing through. Based upon the recommendations of the panel, the maximum bar spacing between the bar ends and the opposing bars was reduced to 3½ inches (8.9 cm).

Classification

This final rule, technical amendment is consistent with the Endangered Species Act and other applicable law.

Because this rule makes only minor, technical changes, the Assistant Administrator finds for good cause, pursuant to sections 553(b)(B) and 553(d) of the Administrative Procedure Act, that it is unnecessary to provide for prior public notice and comment, and to delay for 30 days the effective date of this rule, respectively.

Because this rule is being issued without prior public comment, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act and none has been prepared.

Because this rule does not alter the conclusions of previous environmental impact analyses and environmental assessments, it is categorically excluded by NOAA Administrative Order 216-6 from the requirement to prepare an environmental assessment.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects

50 CFR Part 217

Endangered and threatened species, Exports, Fish, Imports, Marine mammals, Transportation.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: October 14, 1993.

Gary Matlock,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR parts 217 and 227 are amended as follows:

PART 217—GENERAL PROVISIONS

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1531-1544; and 16 U.S.C. 742 *et seq*, unless otherwise noted.

2. In § 217.12, the definition for "Approved TED" is revised to read as follows:

§ 217.12 Definitions.

* * * * *

Approved TED means:

(1) A hard TED that complies with the generic design criteria set forth in 50 CFR 227.72(e)(4)(i). (A hard TED may be modified as specifically authorized by 50 CFR 227.72(e)(4)(iv)); or

(2) A soft TED that complies with the provisions of 50 CFR 227.72(e)(4)(iii); or

(3) A special hard TED which complies with the provisions of 50 CFR 227.72(e)(4)(ii).

PART 227—THREATENED FISH AND WILDLIFE

3. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

4. In § 227.72, existing paragraphs (e)(4)(ii) and (iii) are redesignated as paragraphs (e)(4)(iii) and (iv) respectively; newly designated (e)(4)(iv) introductory text is revised; and a new paragraph (e)(4)(ii) is added to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(4) * * *

(i) * * *

(ii) *Special Hard TEDs.* Special hard TEDs are hard TEDs which do not meet all of the design and construction criteria of the generic standards. The following special hard TEDs are approved TEDs:

(A) *Flounder TED* (Figure 10). The Flounder TED must be constructed of at least 1¼ inch (3.2 cm) outside diameter aluminum or steel pipe with a wall thickness of at least ⅛ inch (0.3 cm). It must have a rectangular frame with outside dimensions which can be no less than 51 inches (129.5 cm) in length and 32 inches (81.3 cm) in width. It must have at least five vertical deflector bars, with bar spacings of no more than 4 inches (10.2 cm). The vertical bars must be connected to the top of the frame and to a single horizontal bar near the bottom. The horizontal bar must be connected at both ends to the sides of the frame and parallel to the bottom bar of the frame. There must be a space no larger than 10 inches (25.4 cm) between the horizontal bar and the bottom bar of the frame. An additional vertical bar runs from the middle of the bottom bar to the middle of the horizontal bar dividing the opening at the bottom into two rectangles with an opening height of no more than 10 inches (25.4 cm) and

an opening width of no more than 14½ inches (36.8 cm). If, because of the width of the TED, the opening width of the bottom rectangles exceeds the maximum allowed, additional vertical bars must be added. This TED must be sewn into the trawl around the entire circumference of the TED with heavy twine. The angle of the deflector bars must be between 30° and 50° from the normal flow through the interior of the trawl. The deflector bars must be positioned in the net to deflect turtles to the escape opening in the top of the trawl. The escape opening must be cut horizontally along the same plane as the TED and must measure at least 35-inches (88.9 cm) in horizontal taut length, and simultaneously, 12 inches (30.5 cm) in vertical taut height, measured at the mid-point of the horizontal measurement. The entire width of the escape opening from the trawl must be centered on and immediately forward of the frame at the top of the net when the net is in its deployed position. Installation of an accelerator funnel is not permitted with this TED. Use of this TED is restricted to the Atlantic summer flounder bottom trawl fishery.

(B) *Jones TED* (Figure 11). The Jones TED must be constructed of at least 1¼ inch (3.2 cm) outside diameter aluminum or steel pipe, and the pipe must have a wall thickness of at least ⅛ inch (0.3 cm). It must be generally oval in shape with a flattened bottom. The frame must have an inside horizontal and vertical measurement of at least 28 inches (71.1 cm) in the Gulf area and 30 inches (76.2 cm) in the Atlantic area. The required inside measurements must be at the mid-point of the deflector grid. The deflector bars must be attached to the frame at a 45° angle from the horizontal positioning downward and each bar must be attached at only one end to the frame. The deflector bars must be attached and lay in the same plane as the frame. The space between the ends of the bottom deflector bars and the bottom frame bar must be no more than 3 inches (7.6 cm). The spacing between the bottom three deflector bars on each side must be no greater than 2½ inches (6.4 cm). The spacing between all other deflector bars must not exceed 3½ inches (8.9 cm) and spacing between ends of opposing deflector bars also must not exceed 3½ inches (8.9 cm). This TED must be sewn into the trawl around the entire circumference of the TED with heavy twine. The angle of the deflector bars must be between 30° and 50° from the normal flow through the interior of the trawl. The escape opening must be at the top of the net when the slope of the bars from forward to aft is upward, and must be at the bottom when such slope is downward. The escape opening must be cut horizontally along the same plane as the TED and must measure at least 35 inches (88.9 cm) in horizontal taut length, and simultaneously, 12 inches (30.5 cm) in vertical taut height in the Atlantic Area. The escape opening must measure at least 32-inches (81.3 cm) in horizontal taut length, and simultaneously, 10-inches (25.4 cm) in vertical taut height in the Gulf Area. The required vertical height must be measured at the mid-point of the horizontal measurement. The entire width of the escape opening from the trawl must be centered on and immediately forward of the frame when the net is in its deployed position.

(iii) * * *

(iv) *Allowable modifications.* No modifications may be made to an approved soft TED. Unless otherwise prohibited in paragraph (e)(4)(ii) of this section, the following modifications may be made to an approved hard TED and an approved special hard TED:

* * * * *

5. In § 227.72, paragraphs (e)(5) heading and (e)(5)(i) are revised to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(5) *Revision of generic design criteria, allowable modification of hard TEDs, additional soft TEDs and special hard TEDs.* (i) The Assistant Administrator may revise the generic design criteria for hard TEDs set forth in paragraph (e)(4)(i) of this section, may approve special hard TEDs in addition to those listed in paragraph (e)(4)(ii) of this section, may approve soft TEDs in addition to those listed in paragraph (e)(4)(iii) of this section, or may approve allowable modifications to hard TEDs in addition to those authorized in paragraph (e)(4)(iv) of this section, by a regulatory amendment, if, according to a NMFS-approved scientific protocol, the TEDs demonstrate a sea turtle exclusion rate of 97 percent or greater (or an equivalent exclusion rate). Two such protocols have been published by NMFS (52 FR 24262, June 29, 1987; and 55 FR 41092, October 9, 1990). Testing under the protocol must be conducted under the supervision of the Assistant Administrator, and shall be subject to all such conditions and restrictions as the Assistant Administrator deems appropriate. Any person wishing to participate in such testing should contact the Director, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149.

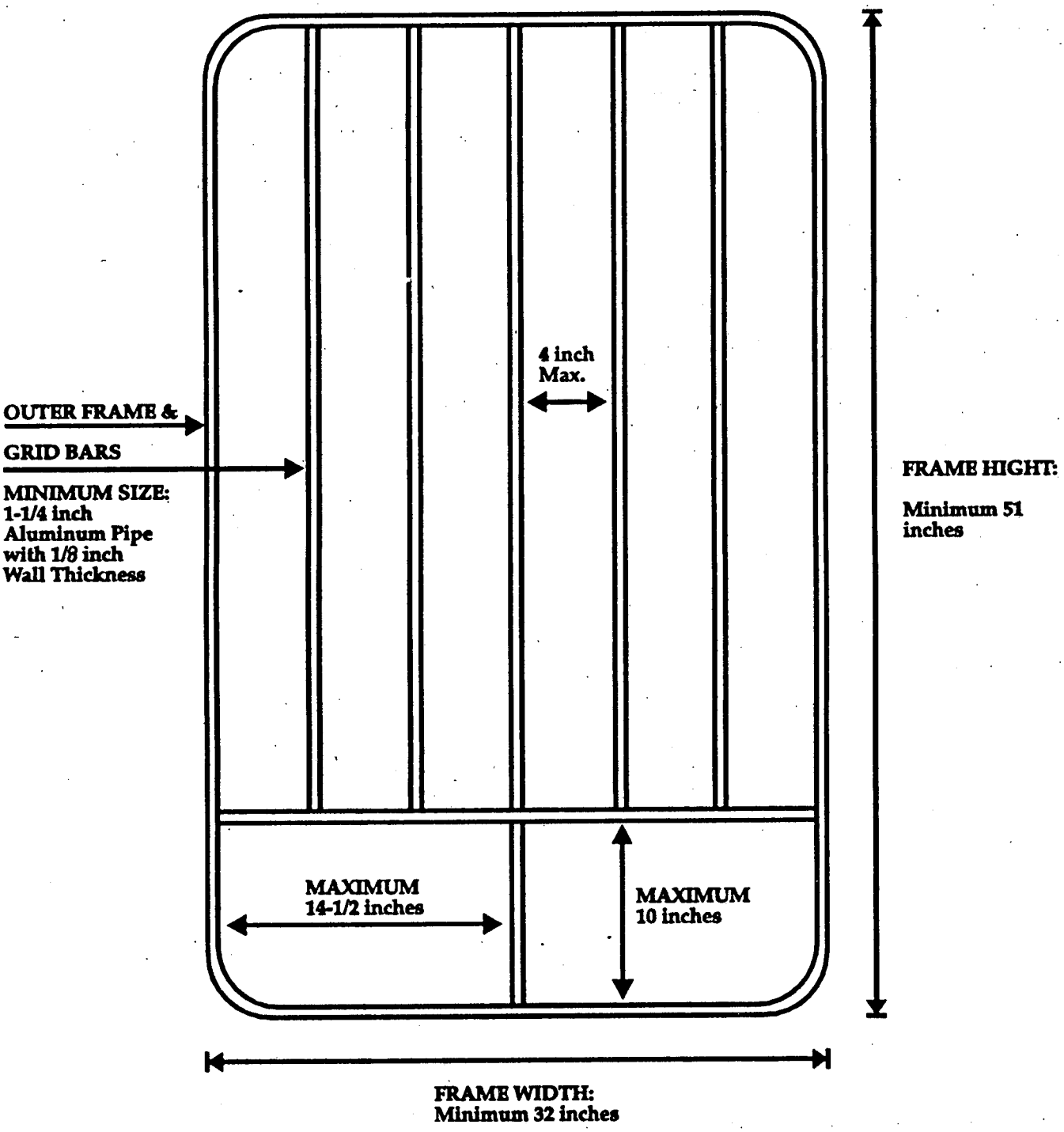
* * * * *

6. Figures 10 and 11 are added to part 227 to read as follows:

BILLING CODE 3510-22-M

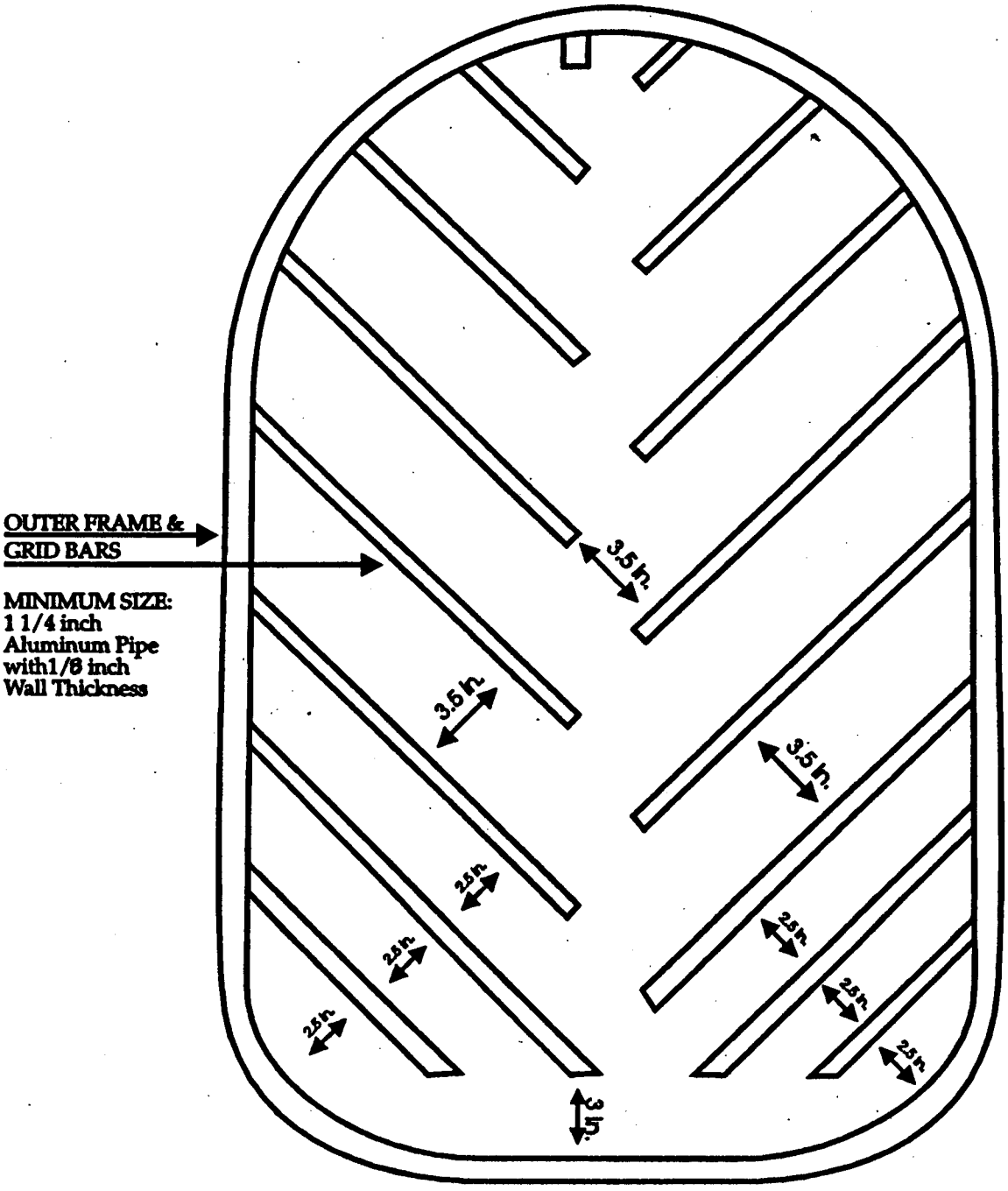
FLOUNDER TED

FIGURE 10



JONES TED

FIGURE 11



[FR Doc. 93-25715 Filed 10-15-93; 8:45 am]
BILLING CODE 3510-22-C

Proposed Rules

Federal Register
Vol. 58, No. 201
Wednesday, October 20, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket No. PRM–20–22]

Northeast Ohio Regional Sewer District; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated August 2, 1993, which was filed with the Commission by Northeast Ohio Regional Sewer District. The petition was docketed by the NRC on August 10, 1993, and has been assigned Docket No. PRM–20–22. The petitioner requests that the NRC amend its regulations to require that all licensees provide at least 24 hours advance notice to the appropriate sewage treatment plant before releasing radioactive material to the sanitary sewer system. The petitioner also requests that the NRC exempt materials that enter the sanitary waste stream from the requirements regarding Commission approval for incineration under the NRC's current regulations.

DATES: Submit comments by January 3, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

For a copy of the petition, write the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7758 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

The NRC has established standards for protection against ionizing radiation resulting from activities conducted under licensees and has issued these standards in the regulations codified in 10 CFR part 20. These regulations are intended to control the receipt, possession, use, transfer, and disposal of licensed material by its licensees. Licensed material is any source, byproduct, or special nuclear material received, possessed, used, transferred, or disposed of under a general or specific license issued by the NRC.

In particular, the regulations contained in 10 CFR 20.303 and 20.2003 govern the disposal of licensed material or waste containing licensed material by release into sanitary sewerage. The regulations contained in 10 CFR 20.305 and 20.2004 govern the treatment or disposal of licensed material by incineration. In a petition for rulemaking received by the NRC on August 10, 1993, the Northeast Ohio Regional Sewer District (District) requested that the NRC amend these regulations.

The Petition

The petitioner states that the District's Southerly Wastewater Treatment Center has been contaminated by disposal of wastes contaminated with Cobalt-60 into the sanitary sewer system from other sources. The petitioner states that the characterization and remediation of this contamination is ongoing and will cost the District, at a minimum, in excess of one million dollars. The petitioner also believes that the remediation costs could rise into the billions of dollars if off-site disposal of the contaminated ash is required.

The petitioner states that the District is not the first sewage treatment authority to experience radioactive contamination at a treatment plant. The petitioner states that the NRC has previously documented problems at Tonawanda and Grand Island, NY; Lansing, MI; Oak Ridge, TN; Royersford, PA; and Washington, DC. The petitioner also stated that the NRC has recently investigated an occurrence in Youngstown, OH.

The petitioner states that it is possible that contamination currently exists undetected at other sewage treatment plants. The contamination existed at the District for nearly 10 years before it was detected.

It is the petitioner's understanding that the NRC is reviewing the occurrence of unwanted radioactive material in sewage treatment plants. Regardless of any other changes the NRC may make to its regulations, the petitioner requests the following amendments.

The Suggested Amendments

The petitioner requests that the NRC amend 10 CFR 20.303 and 10 CFR 20.2003 to require that all licensees provide not less than 24 hours advance notice to the appropriate sewage treatment plant before releasing radioactive material to the sanitary sewer system. The petitioner also requests that the NRC amend 10 CFR 20.305 and 10 CFR 20.2004, which prohibit the incineration of radioactive waste without NRC approval, to explicitly exempt materials that enter the sanitary waste stream under 10 CFR 20.303 and 10 CFR 20.2003. The petitioner believes that this amendment would clarify that the NRC does not intend to inhibit the operation of more than 200 sewage sludge incinerators nationwide because of the discharges of its licensees.

Dated at Rockville, Maryland, this 14th day of October 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–25721 Filed 10–19–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-ANE-50]

Airworthiness Directives; Teledyne Continental Motors IO-346, IO-520, and IO-550 Series Piston Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Teledyne Continental Motors (TCM) IO-346, IO-520, and IO-550 series piston engines. This proposal would require initial and repetitive inspections of the engine mount brackets for cracks, and if found cracked, replacement with improved design engine mount brackets. All engine mount brackets would require replacement with improved design engine mount brackets at the next engine removal after the effective date of this AD. This proposal is prompted by reports of cracks in engine mount brackets on engines that have completed at least one overhaul cycle. The actions specified by the proposed AD are intended to prevent engine separation from the aircraft due to cracks in the engine mount brackets.

DATES: Comments must be received by December 20, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ANE-50, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, suite 210C, Atlanta, GA 30349; telephone (404) 991-3810, fax (404) 991-3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-ANE-50." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ANE-50, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

The Federal Aviation Administration (FAA) has received 27 Service Difficulty Reports (SDR) concerning cracks in engine mount brackets, Part Numbers (P/N) 630694 and 630695, on Teledyne Continental Motors (TCM) IO-346, IO-520, and IO-550 series piston engines. These cracks in engine mount brackets have been reported on engines that have completed at least one engine overhaul cycle. The manufacturer has determined that the engine mount brackets failed due to low cycle fatigue. In these incidents, the lower left engine mount bracket, P/N 630695, failed first, and if undetected, resulted in the failure of the lower right engine mount bracket, P/N 630694. This condition, if not corrected, could result in engine separation from the aircraft due to cracks in the engine mount brackets.

The FAA has reviewed and approved the technical contents of TCM Service Bulletin (SB) No. M92-13, dated September 4, 1992, that describes procedures for initial and repetitive dye penetrant inspections for cracks of certain engine mount brackets.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require initial and repetitive dye penetrant inspections for cracks in certain lower left engine mount brackets, P/N 630695. If the lower left engine mount bracket is found cracked, this proposed rule would require replacing both the lower left and lower right engine mount brackets with improved design engine mount brackets, P/N 653306 and 653305, respectively. If a crack is not detected, the lower left engine mount bracket would require repetitive inspections at intervals not to exceed 500 hours time in service (TIS) until the next engine removal, at which time engine mount brackets, P/N 630694 and 630695, would be replaced with improved design engine mount brackets, P/N 653306 and 653305. Installation of these improved design engine mount brackets would constitute terminating action to the inspection requirements of this AD. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 9,750 engines of the affected design in the worldwide fleet. The FAA estimates that 8,300 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per inspection, and if the engine mount brackets must be replaced, an additional 4 work hours would be required. If the engine mount brackets are replaced at engine removal, only the parts cost would apply. The average labor rate is $55 per work hour. Required parts would cost approximately $320 per engine. Based on these figures, the maximum total cost impact of the proposed AD on U.S. operators is estimated to be $5,395,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient

federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Teledyne Continental Motors: Docket No. 92–ANE–50.

Applicability: Teledyne Continental Motors (TCM) engine models IO–346A, IO–346B, IO–520C, IO–520CB, and IO–550C; rebuilt engine model IO–520C with serial numbers (S/N) 287051–R and lower; rebuilt engine model IO–520CB with S/N 282226–R and lower; rebuilt engine model IO–550C with S/N 271742–R and lower; and all factory overhauled IO–520C, IO–520CB, and IO–550C engines with a build date prior to August 6, 1992. These engines are installed on but not limited to Beech model A23, A23A, 95–C55, 95–C55A, D55, D55A, E55, E55A, 58, and 58A airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine separation from the aircraft due to cracks in the engine mount brackets, accomplish the following:

(a) For engines with engine mount brackets that have completed at least one engine overhaul cycle, or have accumulated 2,500 or more hours time in service (TIS) on the effective date of this AD, inspect the lower left engine mount bracket, Part Number (P/N) 630695, for cracks using the dye penetrant techniques specified in this paragraph and in accordance with TCM Service Bulletin (SB) No. M92–13, dated September 4, 1992, within the next 50 hours TIS after the effective date of this AD.

(1) Perform the dye penetrant inspection as follows:

Note: Military Specification MIL-I–6866 and American Society of Testing Materials specifications ASTM E1417–93 and E165–9 contain additional information on dye penetrant inspection processes.

(i) *Preparation:* Clean and dry all parts in such a manner as to leave the surfaces free from grease, oil, soaps, alkalies, and other substances which would interfere with inspection. Vapor degreasing is generally suitable for this purpose.

(ii) *Penetrant Application Procedure:* After preparation, spray or brush the parts with the penetrant, and allow to stand for not less than 5 minutes. The effectiveness of the penetrant increases if left standing for a longer time, as the penetrant will reach finer discontinuities.

(iii) *Penetrant Cleaning:* Clean the parts thoroughly using a medium which will remove penetrant from the surfaces of parts; wash with water when the penetrant is water soluble. When other than water soluble penetrants are used, the penetrant shall be removed with a suitable cleaner. Avoid excessive cleaning which would remove the penetrant from discontinuities.

(iv) *Drying:* Dry the parts as thoroughly as possible. Drying of parts may be accomplished by evaporation at room temperature or by placing the parts in a circulating warm air oven or in the air stream of a hot air dryer. Avoid excessive drying time or drying temperatures above 75 °C (165 °F) to prevent excessive evaporation of the penetrant. If heat is used for drying parts, cool parts to approximately 50 °C (120 °F) before proceeding to the developing procedure.

(v) *Developing:* Apply the developer to the dry parts as lightly and as evenly as possible, using as thin a coating of developer as is possible. A translucent film is adequate. Mix wet developer by agitation immediately prior to applying it. After applying the developer, take care that no penetrant indication is disturbed or obliterated in subsequent handling.

(vi) *Examination:* Examine the developed penetrant indications in accordance with the dye penetrant manufacturer's instructions. Examine parts for indications of discontinuities open to the surface.

(vii) *Final cleaning:* Clean the parts following the inspection to remove penetrant and developer.

Note 1: *Caution:* Because of differences among penetrants, take care to ensure that the final cleaner, the penetrant, the penetrant remover, and the developer are suitable for use with each other.

Note 2: *Caution:* All penetrant materials should be kept as free from moisture as possible.

Note 3: *Caution:* Most penetrants, cleaning agents, and developer suspensions are low flash point material; use caution to prevent fires.

(2) If no crack is detected, inspect in accordance with paragraph (a) of this AD at intervals not to exceed 500 hours TIS since the last inspection.

(3) If a crack is detected, prior to further flight replace both the lower left engine mount bracket, P/N 630695, and lower right engine mount bracket, P/N 630694, with improved design engine mount brackets, P/N 653306 and 653305, respectively.

(b) For all engines, replace both the lower left engine mount bracket, P/N 630695, and lower right engine mount bracket, P/N 630694, with improved design engine mount brackets, P/N 653306 and 653305, respectively, at the next engine removal after the effective date of this AD.

(c) Installation of the improved design engine mount brackets, P/N 653306 and 653305, constitutes terminating action to the inspection requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the inspection requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on October 1, 1993.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–25713 Filed 10–19–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

Proposed Modification of the Dallas-Fort Worth, TX, Class B Airspace Area; Public Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meetings.

SUMMARY: This notice is announcing fact-finding informal airspace meetings to solicit information from airspace users and others concerning a proposal to modify the Class B airspace area at Dallas-Fort Worth, TX. The Class B airspace area modification is being considered due to the increased volume of traffic arriving and departing the Dallas-Fort Worth area. These airspace meetings are held to provide interested parties an opportunity to present input on the proposed modification. All comments received during these

meetings will be considered prior to the issuance of a Notice of Proposed Rulemaking.

DATES: The informal airspace meetings will be held on Wednesday, December 8, 1993, and Monday, December 13, 1993. Comments must be received on or before February 18, 1994.

Date: Wednesday, December 8, 1993
Time: 9 p.m.
Place: North Mesquite High School, Mesquite, TX
Date: Monday, December 13, 1993
Time: 9 p.m.
Place: Tarrant County Junior College, Northeast Campus, North Richland Hills, TX

ADDRESSES: Send or deliver comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW-500, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX 76193-0500.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, Southwest Regional Office, ASW-530, telephone: (817) 624-5535.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) The meetings will be informal in nature and will be conducted by a representative of the FAA Southwest Region. Representatives from the FAA will present a formal briefing on the proposed Class B airspace area modification. Each participant will be given an opportunity to deliver comments or make a presentation.

(b) The meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter. The panel may allocate the time available for each presentation in order to accommodate all speakers. The meetings will not be adjourned until everyone on the list has had an opportunity to address the panel. The meetings may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Position papers or other handout material relating to the substance of the meetings will be accepted. Participants wishing to submit handout material should present three copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) The meetings will not be formally recorded. However, a summary of the comments made at the meetings will be filed in the docket.

Agenda for each Meeting

Opening Remarks and Discussion of Meeting Procedures
Briefing on Background for Proposal
Public Presentations
Closing Comments

Issued in Washington, DC, on October 13, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93-25717 Filed 10-6-93; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Ch. VII

[Docket No. 931060-3260]

Request for Comments on Effects of Foreign Policy-Based Export Controls

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Request for comments on foreign policy-based export controls.

SUMMARY: The Bureau of Export Administration (BXA) is reviewing the foreign policy-based export controls in the Export Administration Regulations to determine whether they should be modified, rescinded or extended. To help make this determination, BXA is seeking comments on how existing foreign policy-based export controls have affected exporters and the general public.

DATES: Comments must be received by November 30, 1993 to assure full consideration in the formulation of export control policies as they relate to foreign policy-based controls.

ADDRESSES: Written comments (three copies) should be sent to Patricia Muldonian, Regulations Branch (Room 4054), Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: John Bolsteins, Foreign Policy Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 482-4252. Copies of the current 1993 Annual Foreign Policy Report to the Congress can also be requested.

SUPPLEMENTARY INFORMATION: The current foreign policy controls maintained by the Bureau of Export Administration (BXA) are set forth in the Export Administration Regulations (EAR), parts 776 (Special Commodity Policies and Provisions), 778 (Proliferation Controls), and 785 (Special Country Policies and Provisions). These controls apply to: supercomputers (§ 776.11); crime control and detection commodities (§ 776.14); regional stability commodities and equipment (§ 776.16); equipment and related technical data used in the design, development, production, or use of missiles capable of delivering nuclear weapons (§ 778.7); chemical precursors and biological agents and associated equipment and technical data related to the production of chemical and biological agents (§ 778.8); activities of U.S. persons in transactions related to missile technology or chemical or biological weapons proliferation in named countries (§ 778.9); embargoed countries (§ 785.1); South Africa (§ 785.4(a)); countries designated as supporters of acts of international terrorism (§ 785.4(d)); and, Libya (§ 785.7).

Effective January 21, 1993, the Secretary of Commerce, on the recommendation of the Secretary of State, extended for one year all foreign policy controls then in effect.

To assure maximum public participation in the review process, comments are solicited on the extension or revision of the existing foreign policy controls for another year. Among the criteria the Departments of Commerce and State consider in determining whether to continue or revise U.S. foreign policy controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;

2. Whether the foreign policy purpose of such controls can be achieved through negotiations or other alternative means;

3. The compatibility of the controls with the foreign policy objectives of the United States and with overall United States policy toward the country subject to the controls;

4. The reaction of other countries to the extension of such controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;

5. The effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the

international reputation of the United States as a supplier of goods and technology, or the economic well-being of individual United States companies and their employees and communities does not exceed the benefit to United States foreign policy objectives; and

6. The ability of the United States to enforce the controls effectively.

BXA is particularly interested in the experience of individual exporters in complying with the proliferation controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. BXA is also interested in comments relating to the effects of foreign policy controls on exports of replacement and other parts.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BXA in reviewing the controls and developing the report to Congress.

BXA will consider requests for confidential treatment. The information for which confidential treatment is requested should be submitted to BXA separate from any non-confidential information submitted. The top of each page should be marked with the term "Confidential Information." BXA will either accept the submission in confidence, or if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany such submissions of confidential information. The summary will be made available for public inspection.

Information accepted by BXA as confidential will be protected from public disclosure to the extent permitted by law. Communications between agencies of the United States Government or with foreign governments will not be made available for public inspection.

All other information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BXA requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record concerning these comments will be maintained in the Freedom of Information Records Inspection Facility, room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about inspection and copying of records at this facility may be obtained from Margaret Cornejo, BXA Freedom of Information Officer, at the above address or by calling (202) 482-5653.

Authority: Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.*); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103-10, 107 Stat. 40); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990); as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992); E.O. 12867 of September 30, 1993 (58 FR 51743, October 4, 1993); E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993).

Dated: October 13, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93-25777 Filed 10-19-93; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-46-93]

RIN 1545-AR73

Hedging Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations portion of this issue of the Federal Register, the IRS is issuing temporary regulations to clarify the character of gain or loss from the sale or exchange of property that is part of a business hedge. The temporary regulations address questions that have arisen as a result of the decision of the United States Supreme Court in *Arkansas Best*. The temporary regulations provide guidance to taxpayers entering into hedging transactions and serve as a basis for resolving pending cases involving gains and losses from hedging. The text of the temporary regulations also serves as a partial text of these proposed regulations. This document also contains proposed special identification requirements for specific types of hedging transactions.

DATES: Written comments must be received by December 20, 1993. Requests to speak (with outlines of oral comments) at a public hearing scheduled for Wednesday, January 19, 1994, at 10 a.m. must be received by December 23, 1993.

ADDRESSES: Send all submissions to: Internal Revenue Service, P. O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attn: CC:DOM:CORP:T:R (FI-46-93), room 5228). In the alternative, comments and requests may be hand delivered to: CC:DOM:CORP:T:R (FI-46-93), Internal Revenue Service, room 5228, 1111 Constitution Avenue, NW., Washington, DC 20224. The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, 1111 Constitution Avenue, NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Jo Lynn Ricks of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC 20224 (Attn: CC:DOM:FI&P). Telephone 202-622-3920 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer PC:FP, Washington, DC 20224.

The collection of information in this regulation is in § 1.1221-2(c). This information is required by the Internal Revenue Service to aid it in administering the law and to prevent manipulation, such as recharacterization of transactions in view of later developments. This information will be used to verify that a taxpayer is properly reporting its business hedging transactions. The likely recordkeepers are businesses or other for-profit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require greater or

less time, depending on their particular circumstances.

Estimated total annual recordkeeping burden: 50,000 hours.

The estimated annual burden per recordkeeper varies from .10 to 10.00 hours depending on individual circumstances, with an estimated average of .50 hour.

Estimated number of recordkeepers: 100,000.

Explanation of Provisions

This notice of proposed rulemaking cross references the text of temporary regulations, published in the Rules and Regulations portion of this issue of the **Federal Register**, which add new §§ 1.1221–2T, 1.1233–2T, and 1.1234–4T to the Income Tax Regulations (26 CFR part 1). For the text, see the temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the regulations.

This notice of proposed rulemaking also contains rules under §§ 1.1221–2(c) and 1.1256–1 that are not in the temporary regulations. Proposed § 1.1221–2(c)(2) contains special identification requirements for specific types of hedging transactions. Special rules are proposed for inventory hedges, hedges of debt instruments that cover less than the instruments' terms, anticipatory debt hedges, and hedges of aggregate risks. The Service believes that each of the special rules is needed to enable its examiners to verify that identified transactions are being properly treated for tax purposes. The Service invites comments about the scope of the proposed special rules and about other types of hedges (including hedges entered into with related parties) that may require similar provisions.

Proposed §§ 1.1221–2(c)(4) and 1.1256(e)–1 contain provisions to coordinate the identification of hedges for purposes of sections 1221 and 1256(e). Proposed § 1.1221–2(c)(4) provides that an identification for purposes of section 1256(e)(2)(C) is also an identification for purposes of § 1.1221–2(c). Proposed § 1.1256(e)–1 provides that the identification of a hedging transaction for purposes of section 1256(e)(2)(C) must satisfy the requirements of § 1.1221–2(c), and that any identification for purposes of § 1.1221–2(c) is also an identification for purposes of section 1256(e)(2)(C).

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying.

A public hearing will be held on Wednesday, January 19, 1994, at 10 a.m. in the IRS Auditorium, 7400 corridor, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC. The rules of § 601.601(a)(3) of the "Statement of Procedural rules" (26 CFR part 601) shall apply to the public hearing.

Persons who have submitted written comments by December 20, 1993, and who also desire to present oral comments at the hearing on the proposed regulations, should submit, not later than December 23, 1993, a request to speak and an outline of the oral comments to be presented at the hearing stating the amount of time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation, exclusive of the time consumed by the questions from the panel for the government and answers thereto.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building before 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Jo Lynn Ricks, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding the following citation in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1. 1221–2 also issued under 26 U.S.C. 6001 * * *

Par. 2. Section 1.1221–2 is added. The text of this section, as proposed, is the same as the text of the temporary regulation § 1.1221–2T published elsewhere in this issue of the **Federal Register**, except for paragraphs (c)(2), (c)(4), and(c)(5)(ii), which are added to read as follows:

§ 1.1221–2 Hedging transactions.

* * * * *

(c) * * *

(2) *Additional identification requirements for certain hedging transactions.* In addition to satisfying the requirements of paragraph (c)(1) of this section, the identification of certain hedging transactions must include the information specified in this paragraph (c)(2).

(i) *Inventory hedges.* If the hedging transaction relates to inventory held or to be held by the taxpayer, the identification must specify the type or class of inventory to which the transaction relates.

(ii) *Debt hedges for a limited period.* If the hedging transaction relates to a debt instrument held or issued (or to be held or issued) by the taxpayer and hedges the instrument form less than its expected term, the identification must specify the period to which the transaction relates.

(iii) *Anticipatory debt hedges.* If the hedging transaction relates to a debt instrument to be held or issued by the taxpayer, the identification must specify the instrument's expected amount, date of acquisition or issuance, and term, and the manner in which interest is expected to be computed and paid.

(iv) *Anticipatory asset hedge.* If the hedging transaction relates to assets to be acquired by the taxpayer, the identification must specify the expected

date of acquisition and quantity to be acquired.

(v) *Hedges of aggregate risks.* If the hedging transaction relates to an aggregate risk, the identification must show what interest rate, currency, and/or price risks are being aggregated and the method of determining the aggregate risk to be hedged.

* * * * *

(4) *Consistency with section 1256(e)(2)(C).* Any identification for purposes of section 1256(e)(2)(C) is also an identification for purposes of this section.

(5) * * *

(ii) *Special rule for paragraphs (c)(2) and (c)(4).* Paragraphs (c)(2) and (c)(4) of this section apply to transactions entered into on or after 60 days after the publication of final regulations.

* * * * *

Par. 3. Section 1.1233–2 is added to read as follows:

§ 1.1233–2 Hedging transactions.

[The text of this section, as proposed, is the same as the text of the temporary regulations published elsewhere in this issue of the **Federal Register**].

Par. 4. Section 1.1234–4 is added to read as follows:

§ 1.1234–4 Hedging transactions.

[The text of this section, as proposed, is the same as the text of the temporary regulations published elsewhere in this issue of the **Federal Register**].

Par. 5. Section 1.1256(e)–1 is added to read as follows:

§ 1.1256(e)–1 Identification of hedging transactions.

(a) *Identification and record-keeping requirements.* Under section 1256(e)(2)(C), a taxpayer who enters into a hedging transaction must identify the transaction as a hedging transaction before the close of the day on which the taxpayer enters into the transaction.

(b) *Requirements for identification.* The identification of a hedging transaction for purposes of section 1256(e)(2)(C) must satisfy the requirements of § 1.1221–2(c). Solely for purposes of section 1256(f)(1), however, an identification that does not satisfy all of the requirements of § 1.1221–2(c) is nevertheless treated as an identification under section 1256(e)(2)(C).

(c) *Consistency with § 1.1221–2.* Any identification for purposes of § 1.1221–2(c) is also an identification for purposes of this section.

(d) *Effective date.* This section applies to transactions entered into on or after 60 days after the publication of final regulations.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 93–25780 Filed 10–18–93; 10:00 am]

BILLING CODE 4830–01–U

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26 CFR Parts 1 and 602

[FI–54–93]

RIN 1545–AR96

Clear Reflection of Income in the Case of Hedging Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to accounting for business hedging transactions. In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations to clarify the character of gain or loss recognized from the sale or exchange of property that is part of a business hedge. The text of the temporary regulations serves as a partial text of proposed regulations, published elsewhere in this issue of the **Federal Register**, on the same subject. The proposed regulations in this document will provide guidance to taxpayers regarding when gain or loss from common business hedging transactions is taken into account for tax purposes.

DATES: Written comments must be received by December 20, 1993. Requests to speak (with outlines of oral comments) at a public hearing scheduled for January 19, 1994, must be received by December 23, 1993.

ADDRESSES: Send all submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attn: CC:DOM:CORP:T:R (FI–54–93), room 5228). The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Jo Lynn Ricks of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attn: CC:DOM:FI&P). Telephone (202) 622–3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collection of information in this regulation is in § 1.446–4(d). This information is required by the Internal Revenue Service to verify compliance with section 446 of the Internal Revenue Code. This information will be used to determine whether the amount of tax has been computed correctly. The likely recordkeepers are businesses and other organizations.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require more or less time, depending on their particular circumstances.

Estimated total annual recordkeeping burden: 20,000 hours.

The estimated annual burden per recordkeeper varies from .10 to 10 hours depending on individual circumstances, with an estimated average of .20 hour.

Estimated number of recordkeepers: 100,000.

Background

Under proposed § 1.1221–2, published elsewhere in this issue of the **Federal Register**, property that is part of a hedging transaction, as defined, is not a capital asset. Thus, property that otherwise would be a capital asset is not a capital asset if it is part of a hedging transaction with respect to ordinary property, borrowings, or obligations. Similarly, gain or loss on a short sale or option that is part of a hedging transaction is ordinary rather than capital. Implicit in these rules is the notion that a hedging transaction bears such a direct relationship to the asset or liability being hedged that the character of gain or loss from the hedging transaction is determined by reference to that asset or liability.

Just as the nature of the hedged item affects the character of gain or loss from the hedging transaction, the timing of

the income, deduction, gain, or loss from the hedged item should affect the timing of the income, deduction, gain, or loss from the hedging transaction. Taking gain or loss on the hedging transaction into account when it is realized often does not reflect the economics of the hedging transaction. For example, if property is part of an anticipatory liability hedge, taking gain or loss into account at the time the property is sold does not reflect the fact that the hedge was designed to fix the taxpayer's cost of borrowing over the life of the liability. The economics of a hedging transaction are reflected only when the timing of income, deduction, gain, or loss from the hedge corresponds to the timing of income, deduction, gain, or loss from the asset or liability being hedged.

When property is part of a hedging transaction, taking income, deduction, gain, or loss on the property into account when it is realized often provides significant opportunities for abuse. Taxpayers may selectively dispose of property or terminate a position that is part of a hedging transaction in order to recognize gain or loss in a period other than that in which they recognize income, deduction, gain, or loss from the hedged item. Although the flexibility to control the timing of gain or loss generally is accepted in the tax law, that flexibility is inappropriate when the transaction that gives rise to the gain or loss is so closely related to the asset or liability being hedged.

The potential abuse inherent in taking income, deduction, gain, or loss from hedging transactions into account when realized has increased dramatically with the exponential growth of hedging products and markets over the last decade. Historically, most hedging products were of relatively short duration. This limited the timing mismatches that could be achieved. With the development of sophisticated markets in derivative financial products (*e.g.*, swaps and other notional principal contracts), however, hedges of long duration are readily available and highly liquid. This has created the potential for substantial timing mismatches.

Accordingly, the proposed regulations invoke the Commissioner's authority under sections 446(b), 451, and 461 to require that a taxpayer's method of accounting for hedging transactions clearly reflect income. In general, the proposed regulations require a taxpayer that enters into a hedging transaction as defined in § 1.1221–2(b) to reasonably match the timing of income, deduction, gain, or loss from the hedging transaction with the timing of income, deduction, gain, or loss from the item being hedged.

Explanation of Provisions

Paragraph (a) of § 1.446–4 provides that a hedging transaction, as defined in § 1.1221–2(b), must be accounted for under the rules of § 1.446–4 whether or not the rules of § 1.1221–2(a) govern the character of gain or loss on the transaction. Thus, for example, the rules of this section do not apply to hedges of capital assets, but do apply to foreign currency hedges for which section 988 and the regulations thereunder provide character but not timing rules.

Taxpayers are not required to use the rules of this section for a trade or business in which the cash receipts and disbursements method of accounting is used or in which § 1.471–6 is used for inventory valuations if, for all prior taxable years ending on or after the publication of final regulations, the taxpayer met the $5,000,000 gross receipts test of section 448(c) (or would have met the test if it were a corporation or partnership). The Service does not believe that it is necessary for small taxpayers that are not familiar with accrual accounting concepts to use the rules prescribed in this section. The Service invites comments with respect to the proper scope of the exclusion.

The types of transactions excluded from the application of this section include transactions to which section 475 applies and any section 988 hedging transaction if the transaction is integrated under § 1.988–5 or if other regulations issued under section 988(d) (or an advance ruling described in § 1.988–5(e)) govern the timing of the recognition of gain or loss from the transaction. The Service invites comments with respect to whether these exceptions are appropriate and whether other exceptions should be added.

Under paragraph (b) of § 1.446–4, the method of accounting used for a hedging transaction must clearly reflect the taxpayer's income. To do so, the method must reasonably match the income, deduction, gain, or loss from the hedge with the income, deduction, gain, or loss from the item being hedged.

Paragraph (c) of § 1.446–4 recognizes that more than one method of accounting for a particular type of hedging transaction may satisfy the clear reflection requirement of paragraph (b). Thus, a taxpayer may choose any method that clearly reflects income and may use different methods for different types of hedging transactions and for transactions that hedge different types of items. A method, however, must be used consistently and may be changed only with the consent of the Commissioner.

The effect of paragraph (c) is to give the taxpayer substantial latitude in the selection of a method of accounting. The Service believes that it would be inappropriate to require a particular method if the method being used by the taxpayer satisfies the clear reflection requirement of paragraph (b). It is anticipated that the hedge accounting methods employed by most taxpayers for financial accounting purposes will satisfy the clear reflection standard of paragraph (b) because financial accounting attempts to match related items of income and expense. At present, however, financial accounting standards for hedges are in a state of development. Thus, the proposed regulations do not make the taxpayer's treatment of its hedges for financial accounting purposes determinative for tax purposes.

Paragraph (d) of § 1.446–4 requires that the books and records maintained by the taxpayer disclose the method or methods used to account for different types of hedging transactions. In addition, paragraph (d) supplements the identification requirements for hedging transactions under § 1.1221–2(c) and requires that the books and records maintained by a taxpayer contain whatever more specific identification is necessary to verify the application of the method of accounting used by the taxpayer for a transaction. This rule recognizes that certain methods of accounting will necessitate more detailed identification than others. The purpose of the rules in paragraph (d) is to ensure that the taxpayer has such records as are necessary to allow a Service examiner to determine whether the method of accounting used by the taxpayer for a transaction clearly reflects income.

Paragraph (e) of § 1.446–4 provides guidance for determining whether the clear reflection requirement has been satisfied. The rules of this paragraph are minimum requirements and general guidelines and are not determinative of whether the taxpayer's method clearly reflects income. Providing this type of general guidance gives taxpayers maximum flexibility in accounting for hedging transactions but does not provide certainty with respect to whether particular methods of accounting are acceptable. The Service invites comments with respect to whether additional guidance is needed.

One issue not addressed in paragraph (e) is how to account for an anticipatory hedge where the asset that the taxpayer anticipated purchasing is not purchased or the liability that the taxpayer

anticipated incurring is not incurred. The Service invites comments with respect to whether the gain or loss realized on the hedge should be taken into account over the term that the asset would have been held or the term that the liability would have been outstanding, or whether some other treatment is appropriate.

Another issue not addressed in paragraph (e) is how to account for "global" hedges and other hedges of aggregate risk. Comments are invited with respect to what guidance should be provided regarding how a taxpayer can clearly reflect income from these transactions. The Service also welcomes comments about whether special rules are needed for hedges entered into with a related party.

Paragraph (f) of § 1.446–4 provides that the rules of this section do not change the type or character of income realized on a hedge. Neither these proposed regulations nor proposed § 1.1221–2 provides for integration of the hedging transaction with the asset or liability being hedged. Rather, they respect the separate existence of the hedging transaction while tying the character and the timing of gain or loss from the transaction to the character and timing of gain or loss from the item being hedged. The Service invites comments on whether present law provides the authority to either require or permit integration and, if so, on whether integration should be either required or permitted.

The regulations are proposed to be effective for hedging transactions entered into 60 days after the final regulations are issued. The proposed regulations do not address the way in which taxpayers will be permitted to change their methods of accounting for hedging transactions to conform to the requirements of the regulations. It is anticipated that this guidance will be provided when final regulations are issued, either in the regulations or in a revenue procedure that is published simultaneously with the regulations. Comments are invited with respect to how the change in accounting method should be effected.

Amendments to two other regulations sections are also proposed to conform those sections with § 1.446–4. First, a cross reference is added to § 1.446–3(h) to clarify that a termination payment with respect to a notional principal contract that is part of a hedging transaction is subject to the rules of § 1.446–4. Second, the language of § 1.461–1(a)(2)(iii)(B) is revised to clarify that a loss under section 165 generally is subject to the rules of sections 446 and 461.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed rules are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying.

A public hearing will be held on Wednesday, January 19, 1994 at 10:00 a.m. in the IRS Auditorium, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The rules of § 601.601(a)(3) of the Statement of Procedural Rules (26 CFR part 601) shall apply to the hearing.

Persons who have submitted written comments by December 20, 1993, and who also desire to present oral comments at the hearing on the proposed regulations, should submit, not later than December 23, 1993, a request to speak and an outline of the oral comments to be presented at the hearing stating the amount of time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation, exclusive of the time consumed by the questions from the panel for the government and answers thereto.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building before 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Jo-Lynn Ricks, Office of the Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.446–3 is amended as follows:

1. The first sentence of paragraph (h)(2) is revised.
2. The second sentence of the introductory language of paragraph (h)(5) is revised.
3. The revisions read as follows:

§ 1.446–3 Notional principal contracts.

* * * * *

(h) * * *

(2) *Taxable year of inclusion and deduction by original parties.* Except as otherwise provided (e.g., in section 453, section 1092, or § 1.446–4), a party to a notional principal contract recognizes a termination payment in the year the contract is extinguished, assigned, or exchanged. * * *

* * * * *

(5) * * * The contracts in the examples are not hedging transactions as defined in § 1.1221–2(b), and all of the examples assume that no loss deferral rules apply.

* * * * *

Par. 3. Section 1.446–4 is added to read as follows:

§ 1.446–4 Hedging Transactions.

(a) *In general.* Except as provided in this paragraph (a), a hedging transaction as defined in § 1.1221–2(b) (whether or not the character of gain or loss from the transaction is determined under § 1.1221–2(a)(1) or (2)) must be accounted for under the rules of this section. To the extent that provisions of any other regulations governing the timing of income, deductions, gain or loss are inconsistent with the rules of this section, the rules of this section control.

(1) *Trades or businesses excepted.* A taxpayer is not required to account for hedging transactions under the rules of this section for any trade or business in which the cash receipts and disbursements method of accounting is used or in which § 1.471–6 is used for inventory valuations if, for all prior taxable years ending on or after the date of publication of final regulations under this section, the taxpayer met the $5,000,000 gross receipts test of section 448(c) (or would have met that test if the taxpayer were a corporation or partnership). A taxpayer not required to use the rules of this section may nonetheless use a method of accounting that is consistent with these rules.

(2) Coordination with other sections. This section does not apply to—

(i) Any transaction to which section 475(a) applies;

(ii) Any section 988 hedging transaction if the transaction is integrated under § 1.988–5 or if other regulations issued under section 988(d) (or an advance ruling described in § 1.988–5(e)) govern when gain or loss from the transaction is taken into account;

(iii) The determination of the issuer's yield on an issue of tax-exempt bonds for purposes of the arbitrage restrictions under § 1.148–4(h).

(b) *Clear reflection of income.* The method of accounting used for a hedging transaction must clearly reflect the taxpayer's income. To clearly reflect income, the method used must reasonably match the timing of income, deduction, gain, or loss from the hedging transaction with the timing of income, deduction, gain, or loss from the item or items being hedged. Taking gains and losses into account in the period in which they are realized may clearly reflect income in the case of certain hedging transactions. For example, where the hedge and the item being hedged are disposed of in the same taxable year, taking realized gain or loss into account on both items in that taxable year generally will clearly reflect income. In the case of many hedges, however, taking gains and losses into account as they are realized does not result in the matching required by this section.

(c) *Choice of method and consistency.* For any given type of hedging transaction, there may be more than one method of accounting that satisfies the clear reflection requirement of paragraph (b) of this section. A taxpayer is generally permitted to choose a method of accounting for a particular type of hedging transaction that clearly reflects the taxpayer's income from that type of transaction. *See* paragraph (e) of this section for requirements and limitations on the taxpayer's choice of method. Different methods of accounting may be used for different types of hedging transactions and for transactions that hedge different types of items. Once a taxpayer adopts a method of accounting, however, that method must be applied consistently and can only be changed with the consent of the Commissioner, as provided by section 446(e) and the regulations and procedures thereunder.

(d) *Recordkeeping requirements*—(1) *In general.* The books and records maintained by the taxpayer must contain a description of the accounting method used for each type of hedging transaction. The description of the method or methods used must be sufficient to show how the clear reflection requirement of paragraph (b) of this section is satisfied.

(2) *Additional identification.* In addition to the identification required by § 1.1221–2(c), the books and records maintained by the taxpayer must contain whatever more specific identification with respect to a transaction that is necessary to verify the application the method of accounting used by the taxpayer for the transaction. This additional identification may relate to the hedging transaction or to the item, items, or aggregate risk being hedged. The identification must be made on or before the close of the day on which the taxpayer enters into the transaction and must be made on, and retained as part of, the taxpayer's books and records.

(3) *Transactions not subject to § 1.1221–2.* In the case of a section 988 transaction as defined in section 988(c)(1) or a qualified fund as defined in section 988(c)(1)(E)(iii), the taxpayer also must satisfy the identification and recordkeeping requirements of § 1.1221–2(c).

(e) *Requirements and limitations with respect to hedges of certain assets and liabilities.* In the case of certain hedging transactions, this paragraph (e) provides guidance in determining whether a taxpayer's method of accounting satisfies the clear reflection requirement of paragraph (b) of this section. Even if these rules are satisfied, however, the taxpayer's method, as actually applied to the taxpayer's hedging transactions, must result in the matching of income, deductions, gains, and losses that is essential to the clear reflection of income.

(1) *Hedges of items marked to market.* In the case of a transaction that hedges an item that is marked to market under the taxpayer's method of accounting, marking the hedge to market clearly reflects income.

(2) *Hedges of inventory*—(i) *In general.* A transaction that hedges inventory may be accounted for by treating realized gain or loss on the hedging transaction as if it were an adjustment to the cost or sales price of the corresponding inventory. Under this method, gain or loss from a hedge of anticipated purchases of inventory is taken into account in the same period in which it would have been taken into account if it had been an adjustment to the cost of the inventory, and gain or loss from a hedge of anticipated sales of inventory is taken into account in the same period in which it would have been taken into account if it had been an adjustment to the sales price of the inventory.

(ii) *Alternative methods for certain inventory hedges.* In lieu of the method described in paragraph (e)(2)(i) of this section, other simpler, less precise methods may be used in appropriate cases where the clear reflection requirement of paragraph (b) of this section is satisfied. For example:

(A) Taking into account hedging gains and losses when they are realized clearly reflects income for a taxpayer that identifies its hedging transactions with particular units or groups of units included in inventory at cost and closes its hedges when the corresponding inventory is sold.

(B) Taking into account gains and losses on both hedges of inventory purchases and hedges of inventory sales as if the gains and losses were adjustments to inventory cost clearly reflects income for many taxpayers, but would not clearly reflect income for a taxpayer that uses the last-in, first-out method of accounting for the inventory.

(C) Marking hedges to market may clearly reflect income even though the inventory that is being hedged is not marked to market if the inventory is not accounted for under either the last-in, first-out method or the lower of cost or market method, and if items are held in inventory for short periods of time.

(3) *Hedges of debt instruments.* Gain or loss from a transaction that hedges a debt instrument issued or to be issued by a taxpayer, or a debt instrument held or to be held by a taxpayer, must be accounted for by reference to the terms of the debt instrument and the period or periods to which the hedge relates. A hedge of an instrument that provides for interest to be paid at a fixed rate or a qualified floating rate, for example, generally is accounted for using constant yield principles. Thus, assuming that the instrument remains outstanding, hedging gain or loss is

taken into account in the same periods in which it would be taken into account if it adjusted the yield of the instrument over the term to which the hedge relates. For example, gain or loss realized on a transaction that hedged an anticipated borrowing for its entire term is accounted for, solely for purposes of this section, as if it decreased or increased the issue price of the debt instrument. A hedge of a contingent debt instrument is accounted for in a manner that matches the gain or loss on the hedge with the accrual of the amounts to which the hedge relates.

(4) *National principal contracts.* The rules of § 1.446–3 govern the timing of income and deductions with respect to a notional principal contract unless, because the notional principal contract is used as a hedge, the application of those rules would not result in the matching that is needed to satisfy the clear reflection requirement of paragraph (b) of this section. For example, if a notional principal contract hedges a debt instrument, the method of accounting for periodic payments described in § 1.446–3(e) and the methods of accounting for nonperiodic payments described in § 1.446–3(f)(2)(iii) and (v) generally will clearly reflect the taxpayer's income. The methods described in § 1.446–3(f)(2)(ii) and (iv), however, generally will not clearly reflect the taxpayer's income in that situation.

(5) *Disposition of hedged asset or liability.* If a taxpayer hedges an item and disposes of, or terminates its interest in, the item but does not dispose of or terminate the hedge within a reasonable period, the taxpayer must appropriately match the built-in gain or loss on the hedging transaction to the gain or loss on the disposed item. For example, the taxpayer may mark the hedge to market at the end of the period and take the gain or loss into account under its method of accounting for that type of hedging transaction. Under this approach, the amount of any gain or loss subsequently realized with respect to the former hedging transaction would be adjusted for gain or loss taken into account when the hedge was marked to market

(f) *Type or character of income.* The rules of this section govern the timing of income on hedging transactions but do not affect the type or character of gain, loss, income, or expense produced by the transaction. Thus, for example, the rules of paragraph (e)(2) of this section do not affect the computation of cost of goods sold or sales proceeds for a taxpayer that hedges inventory purchases or sales. Similarly, the rules of paragraph (e)(3) of this section do not increase or decrease the interest income or expense of a taxpayer that hedges a debt instrument or a liability.

(g) *Effective date.* This section applies to hedging transactions entered into on or after the date 60 days after publication of final regulations.

Par. 4. In § 1.461–1, paragraph (a)(2)(iii)(B) is revised to read as follows:

§ 1.461–1 General rules for taxable year of deduction.

* * * * *

(a) * * *

(2) * * *

(iii) * * *

(B) If the liability of a taxpayer is subject to section 170 (charitable contributions), section 192 (black lung benefit trusts), section 194A (employer liability trusts), section 468 (mining and solid waste disposal reclamation and closing costs), or section 468A (certain nuclear decommissioning costs), the liability is taken into account as determined under that section and not under section 461 or the regulations thereunder. For special rules relating to certain loss deductions, see sections 165(e), 165(i), and 165(l), relating to theft losses, disaster losses, and losses from certain deposits in qualified financial institutions.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 93–25781 Filed 10–18–93; 10:00 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT6–1–5684; MT15–1–5691; A–1–FRL–4789–4]

Approval and Promulgation of Air Quality Implementation Plans; State of Montana and the State of Utah; Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the States of Montana and Utah. The Montana and Utah revisions implement oxygenated gasoline programs in Missoula, Montana, and in the Provo-Orem and Salt Lake City-Ogden, Utah, Metropolitan Statistical Areas. These SIP revisions were submitted to satisfy the requirement of section 211(m) of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (the Act) which requires all carbon monoxide nonattainment areas with a design value of 9.5 parts per million (ppm) or greater based generally on 1988 and 1989 air quality monitoring data to implement an oxygenated gasoline program. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before November 19, 1993.

ADDRESSES: Comments may be mailed to: Doug Skie, Chief, Air Programs Branch, Air, Radiation and Toxics Division (8ART-AP), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection during normal business hours at United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Scott P. Lee, Air Programs Branch, State Implementation Plan Section (8ART-AP), US Environmental Protection Agency, Region 8, Denver, Colorado 80202, (303) 293–1887.

SUPPLEMENTARY INFORMATION:

I. Introduction

Motor vehicles are significant contributors of carbon monoxide emissions. An important measure toward reducing these emissions is the use of cleaner-burning oxygenated gasoline. Extra oxygen enhances fuel combustion and helps to offset fuel-rich operating conditions, particularly during vehicle starting, which are more prevalent in the winter.

Section 211(m) of the Act requires that various states submit revisions to their SIPs, and implement oxygenated gasoline programs by no later than November 1, 1992. This requirement applies to all states with carbon monoxide nonattainment areas with design values of 9.5 parts per million or more based generally on 1988 and 1989 data. Each state's oxygenated gasoline program must require gasoline for the specified control area(s) to contain not less than 2.7 percent oxygen by weight during that portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide. Under section 211(m)(2), the oxygenated gasoline requirements are to generally cover all gasoline sold or dispensed in the larger of the Consolidated Metropolitan Statistical Area (CMSA) or the Metropolitan Statistical Area (MSA) in which the nonattainment area is located. Under section 211(m)(2), the

length of the control period, to be established by the EPA Administrator, shall not be less than four months unless a state can demonstrate that, because of meteorological conditions, a reduced control period will assure that there will be no carbon monoxide exceedances outside of such reduced period. EPA announced guidance on the establishment of control periods by area in the **Federal Register** on October 20, 1992.[1]

In addition to the guidance on establishment of control period by area, EPA has issued additional guidance related to the oxygenated gasoline program. On October 20, 1992, EPA announced the availability of oxygenated gasoline credit program guidelines in the **Federal Register**.[2] Under a credit program, marketable oxygen credits may be generated from the sale of gasoline with a higher oxygen content than is required (i.e., an oxygen content greater than 2.7 percent by weight). These oxygen credits may be used to offset the sale of gasoline with a lower oxygen content than is required. Where a credit program has been adopted, EPA's guidelines provide that no gallon of gasoline should contain less than 2.0% oxygen by weight.

EPA issued labeling regulations under section 211(m)(4) of the Act. These labeling regulations were published in the **Federal Register** on October 20, 1992.[3]

II. Background for this SIP Action

A. Montana Program

Missoula County in the State of Montana is designated nonattainment for carbon monoxide and classified as moderate with a design value of 9.6 parts per million based on 1988 and 1989 data.[4] Under section 211(m) of the Act, Montana was required to submit a revised SIP, meeting the criteria specified in section 110 and part D of title I of the Act, which includes an oxygenated gasoline program for Missoula County by November 15, 1992.[5] On November 16, 1992, Stan Stephens, Governor of Montana, submitted to EPA a revised SIP including the oxygenated gasoline program that was adopted by the State on September 25, 1992. EPA summarizes its analysis of the state submittal below. A more detailed analysis of the state submittal is contained in a Technical Support Document (TSD) dated July 20, 1993, which is available from the Region 8 office, listed in the **Addresses** section.

1. Type of Program and Oxygen Content Requirement

As discussed above, section 211(m)(2) of the Act requires that gasoline sold or dispensed for use in the specified control areas contain not less than 2.7 percent oxygen by weight. Under section 211(m)(5), the EPA Administrator issued guidelines for credit programs allowing the use of marketable oxygen credits. Missoula City-County Air Pollution Control Board (MCCAPCB), with the approval of the State, has elected to adopt a regulation requiring 2.7% oxygen content for each gallon of gasoline sold in a control area. The following sections of this notice address some specific elements of the State's submittal. Parties desiring more specific information should consult the TSD.

2. Applicability and Program Scope

Section 211(m)(2) requires oxygenated gasoline to be sold during a control period based on air quality monitoring data and established by the EPA Administrator. Montana has established control periods consistent with the EPA guidance. The control period for the Missoula County program begins on the first day of November each year and ends following the last day of February. Missoula City-County oxygenated gasoline regulations require oxygenated gasoline to be sold in Missoula County, excluding the Salish/Kootenai Indian Reservation, consistent with the requirements of section 211(m)(2) of the Act.

3. Registration, Reporting, and Documentation Requirements

EPA has also specified that records should be retained by all parties in the gasoline distribution system. EPA's guidelines impose responsibilities on various parties in the gasoline industry. Persons who produce or import gasoline (refiners and importers) are responsible for assuring that the gasoline is tested and that the accompanying documentation accurately reflects oxygen content. Persons who transport, store, or sell gasoline (refiners, importers, blenders, distributors, resellers, retailers, wholesale purchaser-consumers) have various responsibilities associated with assuring that only oxygenated gasoline is sold or dispensed for use in control areas. Terminal owners and operators are responsible for assuring that the oxygen content of the gasoline they receive, handle, or dispense is accurate. Retailers and wholesale purchaser-consumers are responsible for assuring that gasoline intended for sale during the control period contains at least 2.0 percent oxygen by weight.

All parties in the gasoline distribution network who are either located or who do business within and whose product is eventually sold into the Missoula County control area for ultimate use are required to keep records concerning certain day-to-day activities from the first day of September through the last day of February of each year. Required documentation must be maintained by all parties in the gasoline distribution network for a period of at least two years. For specific requirements consult the TSD.

4. Prohibited Activities

Refiners, control area terminals, and blending facilities may not transfer gasoline for use in a control area that contains less than 2.7 percent of oxygen by weight to parties who are not themselves refiners, control area terminals, and blending facilities.

5. Enforcement and Penalty Schedules

State oxygenated gasoline regulations must be enforceable by the state oversight agency. EPA recommends that states visit at least 20% of regulated parties during a given control period. Inspections should consist of product sampling and record review. In addition, each state should devise a comprehensive penalty schedule. Penalties should reflect the severity of a party's violation, the compliance history of the party, as well as the potential environmental harm associated with the violation.

The Missoula air pollution control ordinances are legally enforceable by the Missoula City-County Health Department (MCCHD). Violation of any regulation or rule enforced under the program results in a criminal offense punishable by a fine not to exceed $1,000 per day or a civil penalty not to exceed $10,000 per day. These regulations are contained in the

[1] See "Guidelines for Oxygenated Gasoline Credit Programs and Guidelines on Establishment of Control Periods under section 211(m) of the Clean Air Act as Amended--Notice of Availability," 57 FR 47849 (October 20, 1992).

[2] See footnote 1, above. EPA was issued guidelines for credit programs under section 211(m)(5) of the Act.

[3] See "Notice of Final Oxygenated Fuels Labeling Regulations under section 211(m) of the Clean Air Act as Amended--Notice of Final Rulemaking," 57 FR 47769. The labeling regulations may be found at 40 CFR part 80, § 80.35.

[4] See "Designation of Areas for Air Quality Planning Purposes," 56 FR 56694 (November 6, 1991).

[5] See credit program guidelines at footnote 3, wherein the November 15, 1992 SIP revision due date was specified.

Administrative Rules of Montana (ARM) 16.8.101 through 16.8.1602.

The Missoula City-County Air Pollution Control Program and the associated local regulations are also enforceable by the Missoula Department of Health and Environmental Sciences (MDHES), if the MCCHD fails to administer the program. Since the program has been approved by the Missoula Board of Health and Environmental Sciences (MBHES) in accordance with Section 75–2–301 of the Montana Clean Air Act and effectuated by a MBHES order, and since the MDHES can enforce MBHES orders, the MDHES has backup enforcement powers.

6. Test Methods and Laboratory Review

EPA's sampling procedures are detailed in appendix D of 40 CFR part 80. EPA has recommended, in its credit program guidelines, that states adopt these sampling procedures. Missoula City-County and subsequently the State, have adopted EPA sampling procedures.

Each state regulation must include a test method. EPA's guidelines recommend the use of the OFID test, although parties may elect to use ASTM-D4815–89 or another method, approved by EPA. Missoula has elected to require use of the ASTM-D4815–89 method.

EPA has established an interim testing tolerance, which states appropriate ranges for credit and per-gallon programs.[6] As EPA states in the memorandum, for a per-gallon program, such as adopted by Missoula, the purpose of the testing is to determine whether the gasoline contains less than 2.7 percent oxygen by weight. Montana is using testing tolerances consistent with the tolerances in the EPA memo.

7. Labeling

EPA was required to issue Federal labeling regulations under section 211(m)(4) of the Act. These regulations, published in the Federal Register on October 20, 1992[7], required the following statement be posted for a per-gallon program or credit program with minimum oxygen content requirement:

"The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles."

The Federal regulation also specifies the appearance and placement requirements for the labels.

EPA has strongly recommended that states adopt their own labeling regulations, consistent with the Federal regulation. Missoula has adopted labeling regulations which do not conform to Federal regulation. In addition to the required Federal language, Missoula requires that the type of oxygenate blended be indicated on the pump label as follows:

"The gasoline dispensed from this pump is oxygenated with (fill in the blank with MTBE, ethanol or other approved oxygenate) and will reduce carbon monoxide pollution from motor vehicles."

In order for Missoula's labelling regulation to conform with Federal labelling regulations, the additional language specifying oxygenate must be deleted from the federally required text. Additional language may be included on the label, but the statement required by Federal labelling regulation must appear unaltered.

Under the Missoula program as submitted, resellers and wholesale-consumers are required to affix two labels on pumpstands, one label conforming to the language contained in Federal regulation and a second label complying with the Missoula City-County regulation. Parties not complying with both labeling requirements are subject to penalties under State and/or Federal Law. EPA recommends that the Missoula City-County Air Pollution Control Program be amended reflect Federal labelling requirements in order to reduce confusion and cost to regulated parties.

B. Utah Program

The Provo-Orem and Salt Lake City-Ogden MSAs in the State of Utah are designated nonattainment for carbon monoxide and classified as moderate with design values of 15.8 and 9.9 parts per million, respectively.[8] The Provo-Orem value is based on 1988 and 1989 data and Salt Lake-Ogden is based on 1989 and 1990 data.[9] Under section 211(m) of the Act, Utah was required to submit a revised SIP under section 110 and part D of title I of the Act which includes the above mentioned oxygenated gasoline programs for the Provo-Orem MSA (Utah County) and the Salt Lake-Ogden MSA (Weber, Davis, and Salt Lake Counties) by November 15, 1992.[10] On November 9, 1992, Norman H. Bangerter, Governor of Utah, submitted to EPA a revised SIP including the oxygenated gasoline program that was adopted by the State on September 30, 1992.

The State plan requires initial implementation of the program consistent with the requirements Clean Air Act for each of the affected control areas.

The plan revision as submitted by the Governor, was processed as an emergency rulemaking to meet the November 15, 1992 submission deadline. The action being supported by this document, however, is not based on the emergency rulemaking, but on proposed regulations which are an amended form of the emergency rule, which require an attestation engagement and allow compliance calculations as an additional method to demonstrate compliance with minimum oxygen content requirements. The proposed regulatory changes provide for a more effective, and enforceable oxygenated gasoline program.

The Utah Air Quality Board adopted these changes on July 28, 1993 and the rule will be effective on August 31, 1993. EPA is proposing this action using parallel-processing procedures. Both these procedures and the State's record of adoption are discussed in detail in the TSD.

1. Type of Program and Oxygen Content Requirement

As discussed above, section 211(m)(2) of the Act requires that gasoline sold or dispensed for use in the specified control areas contain not less than 2.7 percent oxygen by weight. Under section 211(m)(5), the EPA Administrator issued guidelines for a "credit program" which allows the use of marketable oxygen credits. Utah has elected to adopt a regulation allowing the use of marketable oxygen credits and establishing a 2.0% minimum oxygen content. Under EPA's credit program guidelines, all gasoline sold or dispensed during the control period by each control area responsible party (CAR or Blender CAR)[11] must contain an average oxygen content of not less than 2.7% by weight. Utah has adopted this type of oxygen content provision, limiting the minimum oxygen content to

[6] See Memorandum dated October 5, 1992 from Mary T. Smith, Director, Field Operations and Support Division to State/Local Oxygenated Fuels Contacts.

[7] See footnote 3.

[8] See "Designation of Areas for Air Quality Planning Purposes," 56 FR 56694 (November 6, 1991).

[9] See "Designation of Areas for Air Quality Planning Purposes," 56 FR 56694 (November 6, 1991).

[10] See credit program guidelines at footnote 3, wherein the November 15, 1992 SIP revision due date was specified.

[11] EPA's October 20, 1992 guidelines define a "Control Area Responsible party," or CAR, as a person who owns oxygenated gasoline which is sold or dispensed from a control area terminal. EPA also has a separate definition for a "Blended CAR" as a person who owns oxygenated gasoline which is sold or dispensed from a control area oxygenate blending facility. A Blender CAR is, in general, a party downstream from a terminal who blends oxygenates into gasoline or who otherwise changes the oxygen content of gasoline intended for use in a control area. Unless otherwise noted, the use of the term "CAR" in this notice refers to both CARs and Blender CARs.

2.0% oxygen by weight and requiring an average oxygen content of not less than 2.7% by weight.

2. Applicability and Program Scope

Section 211(m)(2) requires oxygenated gasoline to be sold during a control period based on air quality monitoring data and established by the EPA Administrator. Utah has established control periods consistent with the EPA guidance. Each year the control period for both control areas begins on the first day of November and ends following the last day of February. Utah oxygenated gasoline regulations require oxygenated gasoline to be sold in the Provo-Orem MSA beginning November 1, 1992, and in the Salt Lake-Ogden MSA beginning November 1, 1993, consistent with the requirements of section 211(m)(2) of the Act.

All gasoline sold or dispensed for use within a given control area and during a given control period must comply with the average 2.7 percent oxygen content requirement and must contain not less than 2.0 percent oxygen by weight. Marketable oxygen credits may only be used, sold, or traded within the boundaries of the control area in which they were created (i.e., credits generated in the Provo-Orem control area cannot be sold or traded in the Salt Lake-Ogden control area nor vise versa), and can be used, sold, or traded only during the applicable control period (i.e., no banking of credits is allowed from one control season to the next).

The Utah oxygenated gasoline regulations require oxygenated gasoline to be sold in the MSA in which each nonattainment area is located, consistent with the requirements of section 211(m)(2) of the Act.

3. Registration and Reporting Requirements

EPA's credit program guidelines specify that all parties intending to trade marketable oxygen credits should register with the state at least 30 days in advance of each control season. The 30-day time period is intended to allow the state flexibility, and is a suggested provision. Upon acceptance, Control Area Responsible Party (CAR) identification numbers should be issued by the state. EPA guidelines specify that no party should be allowed to generate, trade, buy or sell credits without a CAR identification number.

Utah's regulation requires all persons who sell or dispense gasoline directly or indirectly to persons who sell or dispense to ultimate consumers in a control area to petition the Executive Secretary of the State Air Quality Board for registration no less than one month prior to the sale or transfer of gasoline into the control areas. Parties required to register include CARs, Blender CARs, carriers, resellers, and distributors as defined in the Utah regulation.

Registering parties must petition for registration using forms prescribed by the Executive Secretary. These forms contain specific business information pertaining to a registrant's gasoline operations. The State requires that registered parties update registration information within 30 working days of any change of information required by the Executive Secretary.

No person shall participate in the Utah oxygenated gasoline program as a CAR, Blender CAR, carrier, reseller, or distributor until the Executive Secretary has confirmed registration of such participant.

EPA has also specified that records should be retained by all parties in the gasoline distribution system. EPA's guidelines impose responsibilities on various parties in the gasoline industry. Persons who produce or import gasoline (refiners and importers) are responsible for assuring that the gasoline is tested and that the accompanying documentation accurately reflects oxygen content. Persons who transport, store, or sell gasoline (refiners, importers, blenders, distributors, resellers, retailers, wholesale purchaser-consumers) have various responsibilities associated with assuring that only oxygenated gasoline is sold or dispensed for use in control areas. Terminal owners and operators are responsible for assuring that the oxygen content of the gasoline they receive, handle, or dispense is accurate. Retailers and wholesale purchaser-consumers are responsible for assuring that gasoline intended for sale during the control period contains at least 2.0 percent oxygen by weight.

All parties in the gasoline distribution network who are located or do business within a control area, and whose product is eventually sold into the control area for ultimate use, should be required to keep records concerning certain day-to-day activities. Under these guidelines, refiners and importers should be required to keep a copy of all the tests that are performed on batches of gasoline prior to shipment, as well as copies of the bills of lading or transfer documents for each batch. Carriers and distributors should be required to keep copies of the documents which accompany every batch of gasoline their employees handle. Terminal owners and operators and CARs and Blender CARs (in an averaging program) should be required to keep records of both the gasoline they receive from upstream parties, as well as copies of all the tests performed and records created before the gasoline was transferred to a downstream party.

The Utah oxygenated gasoline regulations require registration and recordkeeping procedures consistent with the intent of EPA oxygenated gasoline program guidelines.

EPA guidelines also require that CARs commission an annual attestation engagement [12], performed by either an internal auditor or independent Certified Public Account (CPA). The guidelines also specify that the standardized forms, specifying agreed-upon procedures for the conduct of the attest engagement, for use by the internal auditor or CPA be provided by the state.

The Utah oxygenated gasoline regulations require an attestation engagement following each control period, conducted by a qualified internal auditor or a qualified independent CPA, consistent with the EPA oxygenated gasoline program guidelines.

4. Prohibited Activities

EPA's credit program guidelines contain provisions designed to ensure that gasoline that fails to meet the 2.0% by weight minimum oxygen content requirement is not available for use within a control area. Generally, CARs or blender CARs may not transfer gasoline for use in a control area that contains less than the minimum percent of oxygen by weight to parties who are not themselves registered as CARs or blender CARs. Under EPA's credit program guidelines, regulated parties, including refiners, importers, oxygenate blenders, carriers, distributors, or resellers may not fail to comply with recordkeeping requirements. [13]

Prohibited activities under the Utah oxygenated gasoline regulations are consistent with the intent of EPA oxygenated gasoline program guidelines.

5. Transfer Documents

EPA's credit program guidelines specify that transfer documents should include the following information: date

[12] When an averaging program is implemented, each CAR and Blender CAR should be required to submit reports to the states detailing certain activities during the control period. Information should be included specifying the following: the volumes of gasoline bought, sold and transferred; volumes and types of oxygenates bought, sold, and transferred; number of credits bought, sold or transferred; and a detailed demonstration of how credits were calculated.

[13] EPA's recommended provisions for prohibited activities are found at pages 59-61 of the credit program guidelines.

of the transfer, name and address of the transferor, name and address of the transferee, the volume of gasoline which is being transferred, the proper identification of the gasoline as oxygenated or nonoxygenated, the location of the gasoline at the time of the transfer, the type of oxygenate, and the oxygen content of the gasoline (for transfers upstream of the control area terminal and for transfers between CARs, include the oxygenate volume of the gasoline). Records are to be kept in a location where they are available for state review.

Transfer document requirements under the Utah oxygenated gasoline regulations are consistent with EPA oxygenated gasoline program guidelines.

6. Enforcement and Penalty Schedules

State oxygenated gasoline regulations must be enforceable by the state oversight agency. EPA recommends that states visit at least 20% of regulated parties during a given control period. Inspections should consist of product sampling and record review. In addition, each state should devise a comprehensive penalty schedule. Penalties should reflect the severity of a party's violation, the compliance history of the party, as well as the potential environmental harm associated with the violation.

The Utah oxygenated gasoline regulation is enforceable by the Division of Air Quality. Violation of any regulation or rule enforced under the Utah Air Conservation Act may result in a civil penalty not to exceed $10,000 per day. Any person knowingly in violation of this regulation for more than 30 days after been notified in writing by the Executive Secretary is guilty of an offense and subject to a fine not to exceed $25,000 for each day of violation in the case of a first offense and not more than $50,000 for each day of violation in the case of subsequent offenses. The legal authority concerning penalties is contained in the Utah Code, Utah Air Conservation Act, Sections 19–2–115 thru 19–2–120.

Utah's oxygenated gasoline regulation provides for inspection of all registered parties, control area retailers, and control area wholesale purchaser-consumers. Inspection may include sampling, testing and calculation of oxygen content consistent with methods approved by EPA. Additionally, the State may review documentation relating to the oxygenated gasoline program and ensure labels are affixed to pumps in accordance with the State oxygenated gasoline regulations.

Utah does not commit to a specified percentage of the stations to be sampled and tested for compliance with minimum oxygenate requirements, but EPA feels the requirement of an attestation engagement following each control period mitigates this deficiency by providing for compliance calculations showing that the oxygen content requirements have been met. In addition, the State employs a full-time inspector to oversee the oxygenated gasoline program.

7. Test Methods and Laboratory Review

EPA's sampling procedures are detailed in appendix D of 40 CFR part 80. EPA has recommended, in its credit program guidelines, that states adopt these sampling procedures. Utah has adopted EPA sampling procedures.

Each state regulation must include a test method. EPA's guidelines recommend the use of the OFID test, although parties may elect to use ASTM-D4815–89 or another method, if approved by EPA. Utah's regulation requires the use of the OFID test as specified in appendix C of EPA oxygenated gasoline credit program guidelines, the ASTM-D4815–89 method and alternative test methods as approved by the Executive Secretary. In his letter submitting this regulation to EPA, Governor Bangerter committed to not allow the use of any alternative methods until these methods had been concurred upon by EPA.

EPA has established an interim testing tolerance, which states appropriate ranges for credit and per-gallon programs.[14] As EPA states in the memorandum, for a credit program, such as adopted by Utah, the purpose of the testing is to determine whether the gasoline contains less than 2.0 percent oxygen by weight. Utah has not formally adopted testing tolerances, but is using tolerances consistent with those in the EPA memo.

8. Labeling

EPA was required to issue Federal labeling regulations under section 211(m)(4) of the Act. These regulations, published in the **Federal Register** on October 20, 1992[15], required the following statement be posted for a per-gallon program or credit program with minimum oxygen content requirement:

"The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles."

The Federal regulation also specifies the appearance and placement requirements for the labels. EPA labeling regulations require that the posting be in block letters of no less than 20-point bold type. The color of the letters should contrast with the background upon which they are placed. The label is to be placed on the upper third of the vertical surface of the pump on each side with gallonage and dollar amount meters.

EPA has strongly recommended that states adopt their own labeling regulations, consistent with the Federal regulation. Utah has adopted labeling regulations which EPA considers approvable. In addition to the required Federal language, Utah requires the type of oxygenate blended, and offers resellers the option to include the dates in which oxygenated gasoline is dispensed from the pump, to be indicated on the pump label as follows:

Option 1 "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles. This gasoline contains up to (specify maximum percent by volume) (fill in the blank with specific oxygenate or specific combination of oxygenates in concentration of at least one percent)."

Option 2 "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles. This gasoline contains up to (specify maximum percent by volume) (fill in the blank with specific oxygenate or specific combination of oxygenates in concentration of at least one percent) from November 1 through February 29."

III. Request for Public Comments

The EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above. Comments must be received on or before November 19, 1993.

The revisions are being proposed under a procedure called "parallel processing" (47 FR 27073). If the proposed revisions are substantially changed in areas other than those identified in this notice, EPA will evaluate those changes and may publish a revised NPR. If no substantial changes are made other than those cited in this notice, EPA will publish a final rulemaking notice on the revision. The final rulemaking action by EPA will occur only after SIP revisions have been adopted by Utah and submitted to EPA for incorporation into the SIP. Parallel processing will reduce the time

[14] See Memorandum dated October 5, 1992 from Mary T. Smith, Director, Field Operations and Support Division to State/Local Oxygenated Fuels Contacts.

[15] See footnote 3.

necessary for final approval of these SIP revisions by 3 to 4 months.

IV. Proposed Action

EPA is proposing to approve the revisions to the Montana SIP and the revisions to the Utah SIP, both for oxygenated gasoline programs meeting the requirements of section 211(m) of the Act.

V. Executive Order 12291

The OMB has exempted this rule from the requirement of section 3 of Executive Order 12291.

VI. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over population of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.* 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 24, 1993.

Jack McGraw,

Acting Regional Administrator.

[FR Doc. 93–25759 Filed 10–19–93; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[OR–29–1–5829; FRL–4790–8]

Approval and Promulgation of State Implementation Plans; Oregon

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Oregon. This revision implements an oxygenated gasoline program in the Clackamas, Jackson, Multnomah, Washington and Yamhill counties, and an eleven by twelve mile area surrounding Klamath Falls and a nine mile by nine mile area surrounding Grants Pass. This SIP revision was submitted to satisfy the requirement of section 211(m) of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (the Act) which requires all carbon monoxide nonattainment areas with a design value of 9.5 parts per million (ppm) or greater based generally on 1988 and 1989 air quality monitoring data to implement an oxygenated gasoline program. The intended effect of this action is to propose approval of the oxygenated gasoline program. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before November 19, 1993.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Air and Radiation Branch (AT–082), United States Environmental Agency, 1200 6th Avenue, Seattle, Washington 98101.

Copies of the documents relevant to this action are available for public inspection during normal business hours at: Air and Radiation Branch (Docket # AK2–1–5480), United States Environmental Protection Agency, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101, and Department of Environmental Quality, Vehicle Inspection Program, 1301 SE., Morrison Street, Portland, Oregon 97214

FOR FURTHER INFORMATION CONTACT: Christi Lee, Air and Radiation Branch (AT–082), United States Environmental Agency, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION:

I. Introduction

Motor vehicles are significant contributors of carbon monoxide emissions. An important measure toward reducing these emissions is the use of cleaner-burning oxygenated gasoline. Extra oxygen enhances fuel combustion and helps to offset fuel-rich operating conditions, particularly during vehicle starting, which are more prevalent in the winter.

Section 211(m) of the Act requires that various states submit revisions to their SIPs and implement oxygenated gasoline programs by no later than November 1, 1992. This requirement applies to all states with carbon monoxide nonattainment areas with design values of 9.5 parts per million or more based generally on 1988 and 1989 data. Each state's oxygenated gasoline program must require gasoline for the specified control area(s) to contain not less than 2.7 percent oxygen by weight during that portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide. Under section 211(m)(2), the oxygenated gasoline requirements are to generally cover all gasoline sold or dispensed in the larger of the Consolidated Metropolitan Statistical Area (CMSA) or the Metropolitan Statistical Area (MSA) in which the nonattainment area is located. Under section 211(m)(2), the length of the control period, to be established by the EPA Administrator, shall not be less than four months in length unless a state can demonstrate that, because of meteorological conditions, a reduced control period will assure that there will be no carbon monoxide exceedances outside of such reduced period. EPA announced guidance on the establishment of control periods by area in the **Federal Register** on October 20, 1992.

In addition to the guidance on establishment of control period by area, EPA has issued additional guidance related to the oxygenated gasoline program. On October 20, 1992 EPA announced the availability of oxygenated gasoline credit program guidelines in the **Federal Register**. Under a credit program, marketable oxygen credits may be generated from the sale of gasoline with a higher oxygen content than is required (i.e. an oxygen content greater than 2.7 percent by weight). These oxygen credits may be used to offset the sale of gasoline with a lower oxygen content than is required. Where a credit program has been adopted, EPA's guidelines provide that no gallon of gasoline should contain less than 2.0 percent oxygen by weight.

EPA issued labeling regulations under section 211(m)(4) of the Act. These labeling regulations were published in the **Federal Register** on October 20, 1992.

II. Background for this Action

Portland, Grants Pass, Klamath Falls and Medford are designated nonattainment for carbon monoxide and classified as moderate with design values based on 1988 and 1989 data. Under section 211(m) of the Act, Oregon was required to submit a revised SIP under section 110 and part D of title I of the Act which includes an oxygenated gasoline program for Grants Pass, Klamath Falls, Medford and Portland by November 15, 1992. On November 16, 1992 the Director of the Oregon Department of Environmental Quality (ODEQ) submitted to EPA a revised SIP including the oxygenated gasoline program that was adopted by the Environmental Quality commission on October 16, 1992 and went into effect on November 1, 1992. EPA summarizes its analysis of the state submittal below. A more detailed analysis of any inconsistencies between the state submittal and EPA's regulation is contained in a Technical Support Document (TSD), which is available from the Region 10 office, listed in the **Addresses** section.

Type of Program and Oxygen Content Requirement

As discussed above, section 211(m)(2) of the Act requires that gasoline sold or dispensed for use in the specified control areas contain not less than 2.7 percent oxygen by weight. Under section 211(m)(5), the EPA Administrator issued guidelines for credit programs allowing the use of marketable oxygen credits. Oregon has elected to adopt a regulation requiring control area responsible parties (CARs) to supply an average of at least 2.7 percent oxygen for each control area serviced. A CAR is defined as a person who owns oxygenated gasoline which is sold or dispensed from a control area terminal. A blender CAR is, in general, a party downstream from a terminal who blends oxygenates into gasoline or who otherwise changes the oxygen content of the gasoline intended for use in a control area.

To achieve an average of 2.7 percent oxygen, a blender will be allowed to supply a minimum of 2.0 percent oxygenate gasoline and a maximum of 3.7 percent. Each gallon of fuel pumped by the retailer must have a minimum of 2.0 percent oxygen. Trading of oxygen credits is allowed. The following sections of this notice address some specific elements of the state's submittal. Parties desiring more specific information should consult the TSD.

Applicability and Program Scope

Section 211(m)(2) requires oxygenated gasoline to be sold during a control period based on air quality monitoring data and established by the EPA Administrator. Oregon has established a control period of November through February which is consistent with the EPA guidance.

All gasoline sold or dispensed for use within a given control area and during a given control period must comply with the average 2.7 percent oxygen content requirement and must contain not less than 2.0 percent oxygen by weight. Marketable oxygen credits may only be used or traded within the boundaries of the control area in which they were created, and only during the applicable control period.

Oregon's oxygenated gasoline program has an "averaging period" scheme. Under an averaging period scheme, all gasoline sold or dispensed within the control areas during a given averaging period must comply with the 2.7 percent average oxygen content standard. The averaging period in Oregon's program is four months.

The Federal CAA requires oxygenated gasoline sold in the entire county of nonattainment areas that are Metropolitan Statistical Areas (MSAs). Medford and Portland Oregon are MSAs and therefore, the Oregon oxygenated gasoline regulations require oxygenated gasoline to be sold in Clackamas, Jackson, Multnomah, Washington and Yamhill counties. Klamath Falls and Grants Pass are nonattaiment areas but are not MSAs. In this case, EPA guidance requires the nonattainment areas be control areas, as a minimum. Oregon regulation requires oxygenated gasoline in an eleven by twelve mile area surrounding Klamath Falls and a nine mile by nine mile area surrounding Grants Pass. Both areas incorporate the entire nonattainment area thus meeting EPA guidance. ODEQ believes use of county boundaries in Grants Pass and Klamath Falls would impose an unnecessary burden of record keeping and liability on small service stations quite distant from the CO nonattainment areas. Sale of nonoxygenated fuel from these outlying stations outside of Grants Pass and Klamath Falls is not expected to significantly impact ambient CO concentrations within the nonattainment areas. On the other hand, other planning boundaries such as the urban growth boundaries are of irregular shape and are difficult for the public to identify. They also exclude some close-in service stations that are inside the square and rectangular areas. This could produce undesirable competition between oxygenated fuels and nonoxygenated fuels stations and lead to an erosion of CO benefits if oxygenated fuels purchase is not considered desirable by the consumer.

Registration and Reporting Requirements

EPA's credit program guidelines specify that all parties intending to trade marketable oxygen credits should register with the state at least 30 days in advance of each control season. The 30 day time period is intended to allow the state flexibility and is a suggested provision. Upon acceptance, CAR identification numbers should be issued by the state. EPA guidelines specify that no party should be allowed to generate, trade, buy or sell credits without a CAR identification number.

Within at least 30 days before the control period in which a person meets the definition of CAR or blender CAR, that person shall petition for registration as a CAR or blender CAR. A person may petition for registration as a CAR or Blender CAR after the beginning of the control period but should also do so at least 30 days before conducting activities as a CAR or blender CAR. ODEQ will issue a unique identification number within 30 days after submission of a registration application. All terminals, distributors and service stations which service control areas during the control period will be required to register with ODEQ and receive a permit. A fee will be assessed of the registrants to support the ODEQ's efforts. Terminals will be assessed an annual fee of $5,700, distributors an annual fee of $500 and service stations an annual fee of $100. These funds will support the ODEQ's annual budget of $220,000. This assures that there is no conflict with the Oregon constitution's restriction on the use of fuel taxes.

EPA has also specified that records should be retained by all parties in the gasoline distribution system. EPA's guidelines impose responsibilities on various parties in the gasoline industry. Persons who produce or import gasoline (refiners and importers) are responsible for assuring that the gasoline is tested and that the accompanying documentation accurately reflects oxygen content. Persons who transport, store, or sell gasoline (refiners, importers, blenders, distributors, resellers, retailers, wholesale purchaser-consumers) have various responsibilities associated with assuring that only oxygenated gasoline is sold or dispensed for use in control areas. Terminal owners and operators are responsible for assuring that the oxygen content of the gasoline they receive,

handle, or dispense is accurate. Retailers and wholesale purchaser-consumers are responsible for assuring that gasoline intended for sale during the control period contains at least 2.0 percent oxygen by weight.

All parties in the gasoline distribution network who are located or do business within a control area, and whose product is eventually sold into the control area for ultimate use, should be required to keep records concerning certain day-to-day activities. Under these guidelines, refiners and importers should be required to keep a copy of all the tests that are performed on batches of gasoline prior to shipment, as well as copies of the bills of lading or transfer documents for each batch. Carriers and distributors should be required to keep copies of the documents which accompany every batch of gasoline their employees handle. Terminal owners and operators and CARs and blender CARs (in an averaging program) should be required to keep records of both the gasoline they receive from upstream parties, as well as copies of all the tests performed and records created before the gasoline was transferred to a downstream party. Oregon meets these requirements.

EPA guidelines also require that CARs commission an annual attest engagement, performed by either an internal auditor or independent Certified Public Account (CPA). The guidelines also specify that the standardized forms, specifying agreed-upon procedures for the conduct of the attest engagement, for use by the internal auditor or CPA be provided by the state.

ODEQ, in an attempt to reduce excessive paperwork, is not requiring an annual "attest engagement" as included in the EPA guidelines. Instead, attest engagements will be used only for defense, at the option of the blender CAR. If performed, the attest engagement shall consist of performing the agreed upon procedures set forth in the guidelines in accordance with the Association of Independent Certified Public Accountants' statements on standards for Attestation Engagements and using statistical sample design parameters provided by EPA.

Oregon believes the combination of blender records review conducted by the state enforcement personnel and the Oregon tax credit program should combine to ensure adequate compliance documentation. Oregon currently has an oxygenated gasoline tax credit of five cents per gallon for ethanol blends. This credit should provide incentive for the use of oxygenated fuels even in areas and during periods when oxygenated fuel is not required. Parties taking advantage of the Oregon tax credit must file monthly reports with the State Motor Vehicles Division to support payment of a reduced state fuel tax. Submission of these records should reinforce compliance with averaging reports. ODEQ would be able to cross reference with these records.

ODEQ plans on doing extensive annual review of gasoline blender records to insure compliance. Also, the Oregon Department of Transportation's five cent per gallon tax credit for ethanol oxygenated gasoline supplies incentive for industry to use oxygenated gasoline to the 3.5 volume percent level even without regulatory requirement. Given these circumstances, EPA approves of this approach for the state of Oregon.

Prohibited Activities

EPA's credit program guidelines contain provisions designed to ensure that gasoline that fails to meet the 2.0 percent by weight minimum oxygen content requirement is not available for use within a control area. Generally, CARs or blender CARs may not transfer gasoline for use in a control area that contains less than the minimum percent of oxygen by weight to parties who are not themselves registered as CARs or blender CARs. Under EPA's credit program guidelines, regulated parties, including refiners, importers, oxygenate blenders, carriers, distributors, or resellers may not fail to comply with recordkeeping requirements.

Oregon's rule specifies that at the end of the control period, the CAR must report to the state the blending activities and will be liable for a penalty from ODEQ if the average (with credits) is less than 2.7 percent. If a fuel dispenser, for example, is found dispensing fuel of less than 2.0 percent oxygen in a control area during a control period, all parties that owned the fuel from the CAR to the station will be considered responsible parties, including the CAR itself. Oregon's rule meets all of the above guidelines.

Transfer Documents

EPA's credit program guidelines specify that transfer documents should include the following information: date of the transfer, name and address of the transferor, name and address of the transferee, the volume of gasoline which is being transferred, the proper identification of the gasoline as oxygenated or nonoxygenated, the location of the gasoline at the time of the transfer, the type of oxygenate, and the oxygen content of the gasoline (for transfers upstream of the control area terminal and for transfers between CARs, include the oxygenate volume of the gasoline). Records are to be kept in a location where they are available for state review. Oregon meets EPA's recommendation.

Oregon has included requirements related to transfer documentation in its regulation. These transfer document requirements will enhance the enforcement of the oxygenated gasoline regulation, by providing a paper trail for each gasoline sample taken by state enforcement personnel.

Enforcement and Penalty Schedules

State oxygenated gasoline regulations must be enforceable by the state oversight agency. Each state should devise a comprehensive penalty schedule. Penalties should reflect the severity of a party's violation, the compliance history of the party, as well as the potential environmental harm associated with the violation.

At the end of the control period, the CAR must report to the state the blending activities and will be liable for a penalty from ODEQ if the average (with credits) is less than 2.7 percent. If a fuel dispenser (i.e. service station), for example, is found dispensing fuel of less than 2.0 percent oxygen in a control area during a control period, all parties that owned the fuel from the CAR to the station will be considered responsible parties, including the CAR itself. Violations of oxygenated fuels' rules will be Class II as defined in OAR 340 Division 12. Penalties will range from a minimum of $400 per day per violation to maximum of $10,000 per day per violation depending on the severity of the violation and violator's past record of compliance.

Test Methods and Laboratory Review

EPA's sampling procedures are detailed in appendix D of 40 CFR part 80. EPA has recommended, in its credit program guidelines, that states adopt these sampling procedures. Oregon has adopted EPA sampling procedures.

Each state regulation must include a test method. EPA's guidelines recommend the use of the OFID test, although parties may elect to use ASTM-D4815–89 or another method, if approved by EPA. Oregon has elected to use the ASTM 4815–89 or other test methods determined by ODEQ and EPA as being an equivalent.

EPA has established an interim testing tolerance, which states appropriate ranges for credit and per-gallon programs (See Memorandum dated October 5, 1992 from Mary T. Smith). As EPA states in that memorandum, the purpose of the testing in a credit

program is to determine if a sample meets the 2.0 percent minimum oxygen content requirement and to determine whether the documentation that accompanied that gasoline is correct. For a per-gallon program, the purpose of the testing is to determine whether the gasoline contains less than 2.7 percent oxygen by weight. Oregon has established that during the control period and in each control area, oxygenated gasoline blenders must supply an average of at least 2.7 percent oxygen for each control area serviced. To achieve an average of 2.7 percent oxygen a blender will be allowed to supply a minimum of 2.0 percent oxygenate gasoline and a maximum of 3.7 percent. Each gallon of fuel pumped by the retailer must have a minimum of 2.0 percent oxygen.

Labeling

EPA was required to issue Federal labeling regulations under section 211(m)(4) of the Act. These regulations, published in the **Federal Register** on October 20, 1992, required the following statement be posted for a per-gallon program or credit program with minimum oxygen content requirement:

"The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles." The Federal regulation also specifies the appearance and placement requirements for the labels.

EPA has strongly recommended that states adopt their own labeling regulations, consistent with the Federal regulation. Oregon has adopted labeling regulations that differ from the Federal regulation in the following way(s). The lettering on the label is in block style of at least 20 point bold type and the label is being placed on each side of the dispenser from which the gasoline can be dispensed and on the upper one half of the dispenser, in a position that will be clear and conspicuous to the consumer.

Also, Oregon's regulation requires a second label which shows the type of oxygenate(s) and the exact (plus or minus 0.5%) or maximum use concentration by volume of oxygenates in the gasoline. EPA approves Oregon's labeling requirement.

EPA's review of the material indicates that the state has adopted an oxygenated gasoline regulation in accordance with the requirements of the Act. EPA is proposing to approve the Oregon SIP revision for an oxygenated gasoline program, which was submitted on November 16, 1992. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **Addresses** section of this document.

III. Proposed Action

EPA is proposing to approve this revision to the Oregon SIP for an oxygenated gasoline program.

IV. Administrative Review

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions from the requirements of section 3 of Executive Order 12291 for a period of two years (54 FR 2222). EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP will be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under Executive Order 1229, today's action is not "major." It has been submitted to the Office of Management and Budget for review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 1, 1993.

Gerald A. Emison,

Acting Regional Administrator.

[FR Doc. 93–25765 Filed 10–19–93; 8:45 am]

BILLING CODE 6560–60–F

40 CFR Part 52

[TX–28–1–5946; FRL–4791–2]

Conditional Approval and Promulgation of Implementation Plan State of Texas Transportation Control Measures (TCM) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This action proposes to conditionally approve a revision to the Texas State Implementation Plan (SIP) for the attainment of National Ambient Air Quality Standards (NAAQS) for ozone in the Houston-Galveston-Brazoria (hereinafter called Houston) nonattainment area. This revision provides for the adoption and implementation of TCMs for meeting requirements of the Clean Air Act (CAA) as amended in 1990. This SIP revision is a commitment for purposes of offsetting any growth in emissions from the growth in vehicle miles travelled (VMT) or number of trips and to attain reduction in motor vehicle emissions, in combination with other emission reduction requirements, as necessary to comply with reasonable further progress (RFP) milestones and attainment requirements of the CAA. The State of Texas submitted this SIP revision to satisfy the statutory mandate, found in section 182 of the CAA, that requires the State to submit a SIP revision which identifies and adopts specific enforceable TCMs to offset any growth in emissions from growth in VMT or number of vehicular trips in severe ozone nonattainment areas. The EPA is proposing to conditionally approve this SIP revision under section 110(k)(4) of the CAA. The proposed conditional approval is based on a commitment by the Governor to the timely adoption and implementation of a TCM program for meeting all requirements of the CAA and submission of a schedule for timely implementation of TCMs for offsetting VMT emissions. The rationale for the conditional approval and other information are provided in this document.

DATES: Comments on this proposed action must be received in writing on or before November 19, 1993.

ADDRESSES: Comments should be submitted to the EPA Region 6 address indicated. Copies of the State's submittal and other relevant information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours

before the visiting day by contacting Thomas Diggs, Chief, Planning Section (6T-AP), Air Programs Branch, Air, Pesticides, and Toxics Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655–7214; or Texas Natural Resource Conservation Commission, Air Quality Planning, 12124 Park 35 Circle, Austin, Texas 78753, telephone (512) 908–1000.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E.; Air Programs Branch, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655–7247.

SUPPLEMENTARY INFORMATION:

Requirements for SIP Approval

Section 182(d)(1)(A) of the CAA requires States containing ozone nonattainment areas classified as "severe" pursuant to section 181(a) of the CAA to adopt TCMs and transportation control strategies to offset any growth in emissions from growth in VMT or number of vehicle trips and to attain reductions in motor vehicle emissions (in combination with other emission reduction requirements) as necessary to comply with the CAA's RFP milestones and attainment requirements. The requirements for establishing a VMT Offset program are discussed in the General Preamble to Title I of the CAA (57 FR 13498) April 16, 1992, in addition to section 182(d)(1)(A).

Section 110(k) of the CAA contains provisions governing the EPA's review of SIP submittals. Once found to be complete or deemed complete by the passage of time, the EPA can take one of three actions on VMT Offset SIP submittals. If the submittal satisfactorily addresses all of the required VMT Offset elements, the EPA shall grant full approval. If the submittal contains: (1) A commitment from the Governor or the Governor's designee to take the required actions; (2) a schedule establishing a date certain for taking the required actions, with the date not being later than one year from the time the EPA will issue a final conditional approval; and (3) evidence that a public hearing was held on the commitments, the EPA may grant conditional approval. See July 22, 1992, memorandum from Michael M. Shapiro, Deputy Assistant Administrator for Air and Radiation, entitled " Guidelines for State Implementation Plan (SIP) Submittals Due November 15, 1992." Finally, if the submittal fails to adequately address or commit to address one or more of the mandatory VMT Offset elements, the EPA shall issue a disapproval.

Requirements for VMT Emission Offset

Section 182(d)(1)(A) of the CAA requires that, in order to gain full approval, a VMT Offset SIP submittal must:

(1) Identify and adopt specific enforceable TCMs and transportation control strategies to offset any growth in emissions from growth in VMT or number of vehicle trips;

(2) Identify and adopt specific enforceable TCMs and transportation control strategies that obtain reductions in motor vehicle emissions in combination with other emission reduction requirements as necessary to comply with RFP milestones;

(3) Consider, choose from among, and implement the measures specified in section 108(f) of the CAA as necessary to demonstrate attainment of the NAAQS; and

(4) Ensure adequate access to downtown, other commercial, and residential areas, and that emissions and congestion are reduced rather than relocated.

Section 182(d)(a)(A) requires that States submit this SIP revision by November 15, 1992, in order to ensure that projected motor vehicle volatile organic compounds (VOC) emissions will never be greater during the ozone season in any given year than during the preceding year's ozone season. When growth in VMT or number of vehicle trips would otherwise cause a motor vehicle emissions upturn, that upturn must be prevented. The emissions level at the point of potential upturn becomes a ceiling on motor vehicle emissions. While this requirement is simple in concept, its application could encourage areas to delay VMT or emissions reduction measures suitable for use as offsets until the trend in motor vehicle emissions reaches its minimum point and is about to turn upwards. To implement the VMT offset provision while avoiding this counterproductive incentive for delay, the EPA looks for State compliance with the following approach: if projected motor vehicle emissions during the ozone season in one year are not higher than during the ozone season the year before, given the control measures in the SIP, the VMT Offset requirement is satisfied.

However, if the State plans to implement control measures over and above those specifically required by the CAA and those required to demonstrate RFP and attainment earlier than would be necessary and sufficient to prevent an emissions upturn, a projected subsequent growth-related increase to the level of emissions that would occur if these measures were scheduled later will not be considered to violate the requirement to offset emissions due to growth in VMT or number of vehicle trips. The latter situation will be viewed as a temporary reduction in emissions to a level below that which is required by the provision, rather than an increase above the required level, with no effect on emissions at or after the point at which offsetting measures become essential to compliance.

The EPA will approve a SIP revision as meeting this provision despite a forecasted upturn in vehicle emissions, as long as motor vehicle VOC emissions in the ozone season of a given year do not exceed a ceiling level which reflects a hypothetical strategy of implementing otherwise specifically required measures on schedule and saving offset measures until the point at which VMT growth would otherwise cause an emissions upturn. The ceiling level is therefore defined (up to the point of upturn) as motor vehicle emissions that would occur in the ozone season of that year, with VMT growth, if all measures for that area in that year were implemented as required by the CAA. When this curve begins to turn up due to growth in VMT or vehicle trips, the ceiling becomes a fixed value.

The ceiling line would include the effects of Federal measures such as new motor vehicle standards, Phase II Reid Vapor Pressure controls, and reformulated gasoline, as well as CAA-mandated SIP requirements such as enhanced inspection and maintenance, the fleet clean-fuel vehicle program, and the employer trip reduction program. The ceiling line would also include the effects of forecasted growth in VMT and vehicle trips in the absence of new discretionary measures to reduce them. The ceiling line must, in combination with projected emissions from nonvehicle sources, satisfy the RFP requirements for the area. Any VMT reduction measures or other actions to reduce motor vehicle emissions adopted since November 15, 1990, and not specifically required for the area by another provision of the CAA, would not be included in the calculation of the ceiling line.

Forecasted motor vehicle emissions must be held at or below the minimum level of the ceiling line after the ceiling line reaches its minimum level. If an area implements offset measures early, the forecasted emissions will be less than the ceiling line, and forecasted motor vehicle emissions could increase from one year to the next, as long as forecasted emissions never exceed the ceiling line.

Basis for Conditional Approval

Section 182(d)(1)(A) requires that specific, enforceable measures selected by the State be submitted by November 15, 1992, along with a demonstration that they are adequate to offset any growth in emissions from growth in VMT or number of trips, which the EPA interprets to mean adequate to hold vehicle emissions within the ceiling described above. It also states that these measures, beyond offsetting growth in emissions, shall be sufficient to allow total area emissions to comply with the RFP and attainment requirements. These requirements create a timing problem. Ozone nonattainment areas affected by this provision are not otherwise required to submit a SIP demonstration which predicts attainment of the 1996 RFP milestone until November 15, 1993, and likewise are not required to demonstrate post–1996 RFP and attainment until November 15, 1994. The EPA does not believe that Congress intended the offset growth provision to advance the dates for these broader submissions. Even without the requirement that the offset growth measures be sufficient to allow overall RFP and attainment in conjunction with other measures, the EPA believes that the November 15, 1992, date would not allow sufficient time to develop a set of measures that would comply with the offset growth provision over the long term.

To address this timing problem so as to allow a more coordinated and comprehensive planning process, the EPA will accept committal SIP revisions for the offset growth requirement under the conditional approval authority of section 110(k)(4) of the CAA as discussed in this document under "Requirements for SIP Approval". This will allow States one year from EPA conditional approval of the committal revision, but not beyond November 15, 1994, to submit the full revision containing sufficient measures in specific and enforceable form.

State Submittal

The EPA designated the Houston area as a "severe" nonattainment area for the ozone NAAQS. Section 182(d)(1)(A) of the CAA requires the State of Texas to implement specific enforceable TCMs and transportation control strategies for offsetting growth in emissions from the VMT growth in this nonattainment area. The State of Texas has not submitted a full TCM SIP revision for fulfilling the requirements of section 182(d)(1)(A) of the CAA as discussed earlier in this document; however, the Governor has submitted a committal SIP in order to address the statutory requirements as specified in the General Preamble for Implementation of Title I of the CAA (57 FR 13498) April 16, 1992. The submittal, dated November 13, 1992, includes a commitment for adoption and submission of a full TCM SIP for the Houston nonattainment area, and a schedule which contains the milestones for submission of a final SIP revision no later than November 15, 1994. A public hearing on the submittal was held by the State on September 2, 1992, in Houston, in accordance with 40 CFR part 51, § 51.102. The State's action is consistent with the three criteria for conditional approval that has been cited earlier in this document.

The schedule commits the State to submit an interim SIP revision by November 15, 1993, which will include certain selected TCMs, regulatory development, and RFP in addressing partially the requirements of the CAA specified in section 182(d)(1)(A). In addition, the State is committed to submit its final specific enforceable TCMs, transportation control strategies, and other requirements for offsetting any growth in emissions from the growth in VMT or number of trips for attaining reduction in motor vehicle emissions in combination with other emission reduction requirements no later than November 15, 1994. It should be noted that the final TCM SIP must be submitted to the EPA one year from the final approval date of the conditional approval, but no later than November 15, 1994, whichever comes first.

Proposed Action

The EPA is proposing to conditionally approve the Texas TCM committal SIP under section 110(k)(4) for the Houston ozone nonattainment area. This proposed conditional approval is based on review and evaluation of the Governor's submission of November 13, 1992, as commitments that the State of Texas will submit an interim TCM SIP revision including the legal authority to the EPA no later than November 15, 1993, and a full TCM/VMT Offset demonstration SIP by November 15, 1994. The EPA's review and evaluation of the committal SIP shows that the State's submittal is appropriate for conditional approval under section 110(k) of the CAA and meets the three criteria which have been outlined in this document. As indicated at the outset of this document, the EPA will consider any comments from all parties received by November 19, 1993.

This proposal is also intended to clarify provisions of the CAA under sections 179(a), (b), and 110(m). The EPA is required to take certain actions concerning the deficient SIPs, nonsubmittals, and failure to comply with the schedule provided in the committal SIPs. If the State fails to meet the applicable interim milestones in its commitment prior to the EPA's final action on the commitment, the EPA proposes, in the alternative, to disapprove the committal SIP as failing to comply with section 110(k)(4), because the EPA believes Texas could not meet the November 15, 1993, and/or November 15, 1994, submission dates should the interim milestones not be met. If the EPA takes final conditional approval on the commitment, the State must meet its commitment to adopt specific and enforceable TCMs, and submit these requirements to the EPA within the time specified in its schedule once the EPA has conditionally approved this commitment. If the State fails to adopt or submit the required rules to the EPA by November 15, 1993, this approval will become a disapproval upon EPA notification of the State by a letter. Upon notification by the EPA to Texas that this committal SIP is disapproved, this committal will no longer be a part of the approved Texas SIP. The EPA will subsequently publish a notice indicating that the commitment has been disapproved and withdrawn from the SIP. In addition, if the EPA issues a final disapproval or the conditional approval is converted to a disapproval, the sanctions clock under section 179(a) will begin. This clock will begin at the time the EPA issues a final disapproval and notifies the State by letter that a conditional approval has been converted to a disapproval. If the State does not submit a SIP, and the EPA does not approve the SIP on which the disapproval was based within 18 months of the disapproval, the EPA must impose one of the sanctions under section 179(b)—highway funding restrictions or the offset sanction. Pursuant to section 110(m), the EPA has discretionary authority to impose sanctions at any time after a final disapproval. In addition, the final disapproval triggers the Federal Implementation Plan requirement under section 110(c).

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-

profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Conditional approvals of SIP submittals under section 110 and subpart I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2)).

If conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, the EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, the EPA certifies that such a disapproval will not have a significant impact on a substantial number of small entities because it does not remove existing State requirements, nor does it substitute a new Federal requirement.

This action has been classified as a Table Two action by the Regional Administrator under the procedures published in the **Federal Register** (FR) on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table Two and Table Three SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table Two and Three SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on the EPA's request.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Sulfur oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 24, 1993.

A. Stanely Meiburg,

Acting Regional Administrator.

[FR Doc. 93–25763 Filed 10–19–93; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 4F3011 and PP 7F3498/P567; FRL–4638–8]

RIN 2070–AC18

Pesticide Tolerances for Cypermethrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the establishment of tolerances for residues of the pesticide chemical cypermethrin [(±) alpha-cyano(3-phenoxyphenyl)methyl (±)-*cis, trans*-3(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] in or on the raw agricultural commodities (RACs) cabbage at 2.0 parts per million (ppm) and onions at 0.1 ppm. This regulation proposes to establish maximum permissible levels for residues of the pesticide chemical requested pursuant to petitions submitted by FMC Corp.

DATES: Written comments, identified by the document control number [PP 4F3011 and PP 7F3498/P567], must be received on or before November 19, 1993.

ADDRESSES: Written comments, identified by the document control number, may be submitted to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703-305-6100.

SUPPLEMENTARY INFORMATION: EPA issued notices in the **Federal Register** of February 8, 1984 (49 FR 4840) and May 13, 1987 (52 FR 18019), which announced that FMC Corp., 1735 Market St., Philadelphia, PA 19103, had submitted pesticide petitions (PP) 4F3011 and 7F3498 proposing to amend 40 CFR part 180 by establishing tolerances for residues of cypermethrin [(±) alpha-cyano-(3-phenoxyphenyl)methyl (±)-*cis, trans*-3(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] and its metabolites dichlorovinyl acid (DCVA) and m-phenoxybenzoic acid (MPB-Acid) and cyperamide under section 408(b) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 346a(b)) in or on the raw agricultural commodities cabbage at 1.5 parts per million (ppm) and bulb onions at 0.1 ppm, respectively.

The petition for cabbage (PP 4F3011) was subsequently amended as announced in the **Federal Register** of August 7, 1985 (50 FR 31917) to increase the tolerance level to 2.0 ppm.

Since the available field residue studies indicate that there will be low levels of metabolic residues in the terminal residues (this is the total amount of pesticidal residue on the crop at the time of harvest), the Agency concluded that the tolerance expression regulate only the parent compound (cypermethrin) and not the metabolites as initially requested.

The Agency issued a conditional registration for cypermethrin for use on cotton with an expiration date of December 1, 1988 (see the **Federal Register** of June 15, 1984 (49 FR 24864), January 9, 1985 (50 FR 1112), and September 27, 1985 (50 FR 39100)). This conditional registration was subsequently amended to include pecans and lettuce and extended to November 15, 1993. One of the conditions of registration was the submission of an aquatic field study to determine the effect of cypermethrin on aquatic life. Due to the conditional status of the registration, tolerances have been established for cypermethrin on a temporary basis on cottonseed, pecans, lettuce, meat, fat, and meat byproducts of hogs, horses, cattle, goats,

sheep, and milk to cover residues expected to be present from use during the period of conditional registration. The Agency is proposing to extend the tolerances for cypermethrin and other synthetic pyrethroid insecticides conditionally registered for use on cotton and other affected commodities until November 15, 1994, and notice of this action appears elsewhere in this issue of the **Federal Register**. To be consistent with the conditional registration status for cypermethrin on cotton, pecans, and lettuce the Agency proposes to establish these tolerances with an expiration date of November 15, 1994, to cover residues expected to be present during the period of conditional registration.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerances include the following:

1. A 13-week rat feeding study with a no-observed-effect level (NOEL) of 75 parts per million (ppm, estimated 3.8 mg/kg/day) for pharmacological effects (increased microsomal enzyme activity) and a NOEL of 150 ppm (estimated 7.6 mg/kg/day) for decrease in body weight.

2. A 13-week dog feeding study with a NOEL of 500 ppm (estimated 13 mg/kg/day). Diarrhea, behavioral signs of nervous system effects and deaths resulted in males and females receiving the next highest dose of 1,500 ppm (estimated 38 mg/kg/day).

3. A rabbit teratology study; no developmental toxicity at 30 mg/kg/day (highest dose tested).

4. A rat teratology study; no developmental toxicity at 70 mg/kg/day (highest dose tested).

5. A 1-year dog oral dosing study (by capsule) with a NOEL of 1.0 mg/kg/day and gastrointestinal tract disturbances at 5.0 mg/kg/day. Definite nervous system effects at 15 mg/kg/day (HDT).

6. A 2-year rat chronic feeding/carcinogenicity study with a NOEL of 150 ppm (estimated 7.6 mg/kg/day) and a lowest effect level (LEL) of 1,500 ppm (estimated 76 mg/kg/day). Weight loss and general changes in blood elements and cholesterol levels were noted at the LEL. Not carcinogenic up to and including 1,500 ppm (HDT).

7. A lifetime (97 weeks in males and 101 weeks in females) mouse carcinogenicity study with positive neoplastic response in lung tissue, based on the occurrence of increased incidence of lung benign adenomas tumors in mice at 1,600 ppm (estimated 230 mg/kg/day) (see discussion below).

8. Two multigeneration rat reproduction studies. The first demonstrated a NOEL of 50 ppm (estimated 2.5 mg/kg/day) and a LEL of 150 ppm (estimated 7.5 mg/kg/day) for decreased body weight gain in maturing pups. There were no effects on reproductive performance. The second study also indicated decreased pup weight gain at 100 ppm (estimated 5 mg/kg/day) and 500 ppm (estimated 25 mg/kg/day), but there were no adverse effects in reproductive performance.

9. An acute hen neurotoxicity study with no evidence of delayed type neurotoxicity at 10 mg/kg (HDT).

10. The mutagenicity/genetic toxicity data base consists of an Ames mutagenicity assay, not mutagenic in TA-98, TA-100, TA-1537, TA-1538, TA-1535 with and without metabolic activation; a host-mediated assay, not mutagenic at 50 mg/kg; a dominant-lethal study, not mutagenic at 25 mg/kg (single dose) or 10.0 mg/kg (5 consecutive doses); and a bone marrow cytogenic study, not mutagenic at 40 mg/kg.

The Agency has concluded that the data available for cypermethrin provide limited evidence for carcinogenicity in female mice and has classified the pesticide as a Category C carcinogen (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with Agency guidelines, published in the **Federal Register** of September 24, 1986 (51 FR 33992). Based on a review by the Health Effects Division Peer Review Committee for Carcinogenicity of the Office of Pesticide Programs, the Agency has determined that a quantitative carcinogenic estimation of human risk based on Q* calculations is not appropriate for the following reasons:

Cypermethrin produced benign lung adenomas at the highest dose level tested in only one sex and species of animal (female mice). Although the observed increase in lung adenomas exceeded historical control values for similar tumors by a small margin, the committee did not consider the finding to be of major importance for the following reasons: (1) Lung adenomas are tumors of relatively common occurrence in mice; (2) the tumors did not show progression to carcinomas; (3) the tumors did not occur with a reduced latency; (4) the tumors did not appear in a compound-related increase in male mice or in rats of either sex with adequate dose level; and (5) the compound itself was not mutagenic.

Instead of a quantitative cancer risk assessment using a Q*, EPA will characterize the additional risk represented for new uses of cypermethrin based on the Reference Dose (RfD) for the chemical. Using a 100-fold safety factor and the NOEL of 1 mg/kg/day determined by the most sensitive species from the 1-year oral dosing study in dogs, the RfD is 0.01 mg/kg/day. A dietary risk chronic exposure analysis was performed using tolerance level residues and 100-percent crop treated to estimate the Theoretical Maximum Residue Contribution (TMRC) for the general population. The TMRC for the general population from all published tolerances is 2.8 X^{-3} mg/kg bwt/day, representing 28% of the RfD. The tolerances for cabbage and bulb onions contribute an additional 2.1 $X\ 10^{-4}$ mg/kg/day. This represents only 2% of the RfD.

The metabolism of cypermethrin in plants is adequately understood for these areas. An analytical method (gas liquid chromatography with an electron capture detector) is available for enforcement. Prior to its publication in the Pesticide Analytical Manual, Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide enforcement when requested from: By mail: Calvin Furlow (H7506C), Public Response and Program Resources Branch, Field Operation Division, U. S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 1130A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-5937.

The pesticide is considered useful for the purposes for which it is sought. Based on the information and data considered, the Agency concludes that the proposed section 408 tolerances will protect the public health.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 4F3011 and PP 7F3498/P567]. All written comments filed in response to this document will be available in the Public Response Section, at the address given above from 9 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the

requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food/feed additive regulations or raising tolerance or food/feed additive regulation levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180

Environmental Protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 1, 1993.

Stephanie R. Irene

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By amending § 180.418 in the table therein, by adding and alphabetically inserting the following raw agricultural commodities, to read as follows:

§ 180.418 Cypermethrin; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Cabbage	2.0
* * * * *	
Onions, bulb	0.10
* * * * *	

[FR Doc. 93-25617 Filed 10-19-93; 8:45 am]

BILLING CODE 6560-60-F

40 CFR Parts 180, 185, and 186

[PP 8F2034, 7F2013, 4F2993, 2F2623, 4F3046, 6F3453, and 6F3318/P569; FRL-4638-7]

RIN 2070-AC18

Pesticide Tolerances for Permethrin, Cypermethrin, Fenvalerate/Esfenvalerate, Tralomethrin, Bifenthrin, Cyfluthrin and Lambda-Cyhalothrin; Extension of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to extend tolerances for the residues of seven synthetic pyrethroids—permethrin, cypermethrin, fenvalerate/esfenvalerate, tralomethrin, bifenthrin, cyfluthrin, and lambda-cyhalothrin (collectively referred to as the synthetic pyrethroids)—in or on certain raw agricultural commodities. This proposal to extend the effective date for tolerances for maximum permissible levels of residues of these synthetic pyrethroids in or on these commodities was requested by FMC Corp. (FMC), Zeneca Ag Products, E. I. DuPont de Nemours and Co., Inc., Hoechst-Roussel Agri-Vet Co., and Miles, Inc. (collectively called the industry's Pyrethroid Working Group (PWG)).

DATES: Written comments, identified by the document control number [PP 8F2034, 7F2013, 4F2993, 2F2623, 4F3046, 6F3453, and 6F3318/P569], must be received on or before November 19, 1993.

ADDRESSES: Written comments, identified by the document control number, may be submitted to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703-305-6100.

SUPPLEMENTARY INFORMATION: Beginning in 1985 the Agency issued Data Call-In Notices (DCI) for chemical-specific aquatic field (mesocosm) data and other aquatic toxicological data to maintain existing registrations and support new registration of synthetic pyrethroid insecticides on cotton. Because laboratory data indicate synthetic pyrethroids are extremely toxic to fish and other aquatic organisms the field data was required to allow the Agency to better understand the potential risk and exposure to the aquatic environment and enable it to complete an ecological risk assessment. In addition, since laboratory tests indicated similar aquatic toxicity among the pyrethroids, for regulatory purposes the Agency decided to treat all synthetic pyrethroids registered for use on cotton as a class. Thus the registrations were made conditional because of the common lack of specific aquatic toxicological hazard data, and the tolerances on cotton and other affected commodities were made temporary until the conditions of registration were fulfilled.

In November 1990, the Agency and the PWG in collaboration with the National Cotton Council agreed to interim risk reduction measures designed to reduce the potential for exposure of aquatic habitats of concern to synthetic pyrethroids applied to cotton. The interim risk reduction measures included user surveys to assess current pyrethroid use practices on cotton, label changes aimed at reducing the aquatic environmental exposure to pyrethroids, and a program of data generation to evaluate the effectiveness of the risk reduction measures. The data and other information required by this joint agreement have been submitted to the Agency and are under review.

As part of this agreement the Agency extended the conditional registration for the seven synthetic pyrethroids on cotton and related commodities to November 15, 1992. This expiration date was subsequently extended to November 15, 1993, to allow the Agency sufficient time to review the data. By

November 15, 1993, the Agency intends to complete review of all data submitted under the data generation program and other information and to make FIFRA section 3 (c)(5) or other appropriate regulatory decisions for the cotton use of the synthetic pyrethroids.

To be consistent with the extensions issued for the conditional registrations the Agency is proposing to amend/extend the tolerances for the seven synthetic pyrethroids on cotton. The Agency has determined that amending/extending the tolerances will protect the human health. Therefore, extensions for the tolerances on cotton and other affected crops are proposed as set forth below.

The data submitted in support of these tolerances and other relevant material have been reviewed. The toxicological and metabolism data and analytical methods for enforcement purposes considered in support of these tolerances are discussed in detail in related documents published in the **Federal Registers** of April 25, 1979 (44 FR 24287—permethrin), January 31, 1979 (44 FR 6098—fenvalerate), September 18, 1985 (50 FR 37581—tralomethrin), February 21, 1985 (50 FR 7172—cypermethrin), January 25, 1988 (53 FR 1923—cyfluthrin), August 15, 1988 (53 FR 30676—befentrhin), and May 24, 1988 (53 FR 18558—lambda cyhalothrin).

Residues remaining in or on the above raw agricultural commodity after expiration of these tolerances will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the conditional registrations.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 8F2034, 7F2013, 4F2993, 2F2623, 4F3046, 6F3453, and 6F3318/P569]. All written comments filed in response to this petition will be available in the Public Response Section, at the address given above from 9 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food/feed additive regulations or raising tolerance or food/feed additive regulation levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180, 185, and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 27, 1993.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that chapter I of title 40 of the Code of Federal Regulations be amdned as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346 and 371.

b. In § 180.378, by revising the introductory text of paragraph (a), to read as follows:

§ 180.378 Permethrin; tolerances for residues.

(a) Tolerances, to expire on November 15, 1994, are established for residues of the insecticide permethrin [(3-pheoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] in or on the following raw agricultural commodities:

* * * * *

c. In § 180.379 by amending the table in paragraph (a) by adding a footnote to the entry for cottonseed as follows:

§ 180.379 Cyano(3-phenoxyphenyl)methyl-4-chloro-α-(1-methylethyl) benzeneacetate; tolerances for residues.

(a)* * *

Commodity	Parts per million
* * * * *	
Cottonseed	0.2[1]
* * * * *	

[1]The tolerance for cottonseed expires on November 15, 1994.

* * * * *

§ 180.418 [Amended]

d. By amending § 180.418 *Cypermethrin; tolerances for residues* in the introductory text by changing "July 1, 1993," to read "November 15, 1994."

e. In § 180.422, by revising the introductory text to read as follows:

§ 180.422 Tralomethrin; tolerances for residues.

Tolerances, to expire on November 15, 1994, are established for the combined residues of the insecticide tralomethrin ((*S*)-alpha-cyano-3-phenoxybenzyl (1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl]-cyclopropanecarboxylate; CAS Reg. No. 66841-25-6) and its metabolites (*S*)-alpha-cyano-3-phenoxybenzyl (1*R*,3*R*)-3(2,2,-dibromovinyl)2,2-dimethylcyclopropanecarboxylate and (*S*)-alpha-cyano-3-phenoxybenzyl (1*S*, 3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate calculated as the parent in or on the following raw agricultural commodities:

* * * * *

f. In § 180.436, by amending the table therein by adding a footnote to the entry for cottonseed as follows:

§ 180.436 Cyfluthrin; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Cottonseed	1.0[1]
* * * * *	

[1]The tolerance for cottonseed expires on November 15, 1994.

g. In § 180.438, the section designation "(a)" is removed, and the introductory text is revised, and the table is amended by adding a footnote to the entry for cottonseed as follows:

§ 180.438 [1 α-(S*),3 α (Z)]-(±)-cyano(3-phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate; tolerances for residues.

Tolerances are established for the combined residues of the insecticide [1 α-(S*),3 α (Z)]-(±)-cyano(3-

phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethycyclopropanecarboxylate, in or on the following raw agricultural commodities:

Commodity	Parts per million
* * * * *	
Cottonseed	0.05[1]
* * * * *	

[1]The tolerance for cottonseed expires on November 15, 1994.

* * * * *

h. In § 180.442 by revising the introductory text, to read as follows:

§ 180.442 Bifenthrin; tolerances for residues.

Tolerances, to expire on November 15, 1994, are established for residues of the pyrethroid bifentrhin (2-methyl[1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate) in or on the following commodities:

* * * * *

Part 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

AUTHORITY: 21 U.S.C. 348.

b. In § 185.1250, by revising paragraph (a) to read as folllows:

§ 185.1250 Cyfluthrin.

(a) A tolerance, to expire on November 15, 1994, of 2.0 parts per million is established for residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate; CAS Reg. No. 69359-37-5) in cottonseed oil resulting from appliction of the insecticide to cottonseed.

* * * * *

c. In § 185.5450, by revising the introductory text to read as follows:

§ 185.5450 Tralomethrin.

Tolerances, to expire on November 15, 1994, are established for the combined residues of the insecticide tralomethrin ((*S*)-alpha-cyano-3-phenoxybenzyl-(1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl] cyclopropanecarboxylate; CAS Reg. No. 66841-25-6]) and its metabolites (*S*)-alpha-cyano-3-phenoxybenzyl (1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-alpha-cyano-3-phenoxybenzyl (1*S*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate calculated as the parent in or on the following food commodities when present as a result of application of the insecticide to the growing crops:

* * * * *

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348

b. In § 186.1250, by revising paragraph (a), to read as follows:

§ 186.1250 Cyfluthrin.

(a) A tolerance, to expire on November 15, 1994, of 2.0 parts per million is established for residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate; CAS Reg. No. 68359-37-5) in cottonseed hulls resulting from application of the insecticide to cottonseed.

* * * * *

[FR Doc. 93-25638 Filed 10-19-93; 8:45 am]
BILLING CODE 6560-60-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1003

RIN 0991-AA65

Civil Money Penalties for Prohibited Referrals to Entities Providing Clinical Laboratory Services and for Prohibited Arrangements and Schemes

AGENCY: Office of Inspector General, HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement sections 1877(g)(3) and 1877(g)(4) of the Social Security Act. Section 1877(g)(3) authorizes the imposition of civil money penalties and an exclusion against any person who presents, or causes to be represented, a bill or claim for a service unlawfully referred under section 1877(a)(1)(A), or has not refunded amounts inappropriately collected for a prohibited referral. In addition, in accordance with section 1877(g)(4) of the Act, the OIG is authorized to impose civil money penalties and an exclusion in cases where a physician or entity enters into an arrangement or scheme, a principal purpose of which the physician or entity knows, or should have known, is to assure referrals which, if they were made directly to the entity, would violate the prohibition on referrals described in section 1877(a) of the Act.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 20, 1993.

ADDRESSES: Address comments to: Office of Inspector General, Department of Health and Human Services, Attention: LRR-30-P, room 5246, 330 Independence Avenue, SW., Washington, DC 20201.

If you prefer, you may deliver your comments to room 5551, 330 Independence Avenue, SW., Washington, DC. In commenting, Please refer to file code LRR-30-P. Comments received timely will be available for public inspection, beginning approximately two weeks after publication, in room 5551, 330 Independence Avenue, SW., Washington, DC on Monday through Friday of each week from 9 a.m. to 5 p.m., (202) 619-3270.

FOR FURTHER INFORMATION CONTACT: Stuart E. Wright, Legislation and Regulations Staff (202) 619-3270.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, Congress has provided the Department of Health and Human Services with increasing civil money penalty (CMP) authorities to ensure compliance with statutory provisions. The original CMP authorities were specifically designed to provide penalties for fraudulent and abusive practices, such as submission of false claims, involving the Medicare and Medicaid programs. The authority for levying CMPs was further expanded in recent years to address issues involving quality of care, other reimbursement issues, and other State health care programs.

Several statutory provisions have been recently enacted by the Congress governing relationships between health care providers and those health care professionals who are (1) owners of the providers or (2) compensated in some way by the providers. In particular, criminal penalties are provided for individuals or entities that knowingly and willfully offer, pay, solicit, or receive remuneration intended to induce the furnishing of items or services covered by Medicare or State health care programs (including Medicaid, and any State program receiving funds under titles V or XX of the Act). Offenses are classified as felonies and are punishable by fines of

up to $25,000 or imprisonment for up to 5 years, or both. (See section 1128B(b) of the Act, 42 U.S.C. 1320a–7b(b), as amended by section 4 of the Medicare and Medicaid Patient Program Protection Act of 1987 (Pub. L. 100–93, enacted August 18, 1987).)

For purposes of section 1128B(b) of the Act, remuneration includes kickbacks, bribes, rebates, and any other exchanges of value made directly or indirectly, overtly or covertly, in cash or in kind. Prohibited conduct includes not only remuneration intended to induce referrals of patients, but also remuneration intended to induce the purchasing, leasing, ordering, or arranging for or recommending any good, facility, service, or item paid by the Medicare or State health care provider.

II. Prohibition on Physician Referrals for Laboratory Service

In a May 1989 report to the Congress entitled "Financial Relationships Between Physicians and Health Care Businesses," the OIG found that Medicare patients of referring physicians who own or invest in independent clinical laboratories received 45 percent more clinical laboratory services than all Medicare patients in general. Section 6204 of Public Law 101–239, the Omnibus Budget Reconciliation Act (OBRA) of 1989, added a new section 1877, "Limitations on Certain Physician Referrals," to the Act. In addition, section 4207(e) of Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990, amended certain provisions of section 6204 of Public Law 101–239 (by clarifying certain definitions and reporting requirements relating to physician ownership and referral). To provide readers of this proposed rule with complete information, we are broadly describing the requirements of section 1877 of the Act. For specific details on prohibited referral arrangements under section 1877, we refer the reader to the HCFA proposed rule (57 FR 8588) published in the **Federal Register** on March 11, 1992.

1. General Prohibition

With certain exceptions, section 1877(a)(1)(A) prohibits a physician from making a referral to an entity for the furnishing of clinical laboratory services, for which Medicare would otherwise pay, if the physician (or a member of the physician's immediate family) has a financial relationship with that entity (as described in section 1877(a)(2)). Further, section 1877(a)(1)(B) prohibits an entity from presenting, or accusing to be presented, a Medicare claim or a bill to any individual, third party payor, or other entity, for clinical laboratory services unlawfully referred under section 1877(a)(1)(A).

For purposes of this general prohibition, section 1877(h)(7) defines "referral" as follows:

- The request by a physician for an item or service which payment may be made under Medicare Part B, including a request by a physician for a consultation with another physician (and any test or procedure ordered by, or to be performed by (or under the supervision of) that other physician), or
- The request or establishment of a plan of care by a physician when the plan includes furnishing clinical laboratory service. However, section 1877(h)(7)(C) provides an exception to this definition for a request by a pathologist for clinical diagnostic laboratory tests and pathological examination services if the services are furnished by (or under the supervision of) the pathologist pursuant to a consultation requested by another physician. These provisions of the law are effective for referrals made after December 31, 1991. Congress provided for general exceptions to the referral prohibitions for specified circumstances and other exceptions limited to specific types of ownership and compensation arrangements.

2. Financial Relationships

Section 1877(a)(2) describes a financial relationship between a physician (or an immediate family member of a physician) and an entity as being an ownership or investment interest in the entity, or a compensation arrangement (as defined in section 1877(h)(1)(A)) between the physician (or immediate family member) and an entity. An ownership or investment interest may be established "through equity, debt, or other means." A person with a financial relationship with an entity is an "investor." Section 1877(h)(5) defines an "interested investor" as an investor who is a physician in a position to make or influence referrals or business to the entity (or who is an immediate family member of such an investor). A "disinterested investor" is defined as an investor other than an "interested investor."

For purposes of this provision, section 1877(h)(1)(A) defines a "compensation arrangement" as an arrangement involving any remuneration between a physician (or an immediate family member) an entity. Section 1877(h)(1)(B) defines "remuneration" to include any remuneration directly or indirectly, overtly or covertly, in cash or in kind.

In addition to setting forth this prohibition against physician referrals to entities providing clinical laboratory services in which they have a financial interest, the statute also provides for the imposition of CMPs and exclusions against any person who (1) presents, or causes to be presented, a bill or claim for a clinical laboratory service that the person knows, or should have known, was unlawfully referred by a physician [1], or (2) has not refunded amounts inappropriately collected for a prohibited referral. In addition, in accordance with section 1877(g)(4) of the Act, the OIG is authorized to impose CMPs and exclusions in cases where a physician or entity enters into an arrangement or scheme, a principal purpose of which the physician or entity knows, or should have known, is to assure referrals which, if they were made directly, would violate the prohibition on referrals described in section 1877(a) of the Act.

III. Summary of the Proposed Rule

With enactment of section 6204 of Public Law 101–239, Congress has broadened the Department's existing authorities by specifically providing new CMPs for billing for prohibited clinical laboratory services and for certain prohibited arrangements and schemes. Authority for imposing these new CMPs will be delegated to the Office of Inspector General.

Sanctions for Improper Claims

Section 1877(g)(3) of the Social Security Act authorizes the imposition of CMPs and exclusions for any person who presents, or causes to be presented, a bill or claim for a service that the person knows, or should have known (1) was provided in accordance with a prohibited referral, or (2) was not properly refunded in accordance with section 1877(g)(2).

Section 1877(g)(3) provides that the CMP be no more than $15,000 for each such service. The Secretary is authorized to make a determination during the same proceeding to exclude the person from Medicare participation and to direct the appropriate State health care program. (In addition, in accordance with section 1128A of the Act, any person subject to a CMP determination in accordance with

[1] Physicians should be aware that under sections 1877(g)(3) and (g)(4), they, as well as the clinical laboratories to which they have made prohibited referrals, may be subject to civil money penalties, assessments, and exclusions from government health care programs, for causing the submission of claims for services resulting from those referrals.

section 1877(g)(3) may also be subject to an assessment of not more than twice the amount claimed for each item or service which was the basis for the penalty. The assessment is in lieu of damages sustained by the Department or a State agency because of that claim.)

In determining the amount of the penalty or assessment for each violation, we would apply the following 5 existing criteria set forth in § 1003.106(a) of the regulations: (1) The nature of the claim or request for payment and the circumstances under which it was presented; (2) the degree of culpability of the person submitting the claim or request for payment; (3) the history of prior offenses of the person submitting the claims or request for payment; (4) the financial condition of the person presenting the claim or request for payment; and (5) such other matters as justice may require. In addition, with respect to the failure to make a timely refund, we are proposing a sixth criterion to be applied that would consider the timeliness and completeness of the refund made.

Sanctions for Circumvention Schemes

In addition, section 1877(g)(4) of the Act authorizes the imposition of CMPs and exclusions in cases where a physician or entity enters into an arrangement or scheme, a principle purpose of which the physician or entity knows, or should have known, is to assure referrals which, if they were made directly, would violate the prohibition on referrals described in section 1877(a) of the Act. An example of such a circumvention scheme is a cross referral arrangement whereby the physician owners of "Y" refer to "X." We request comments regarding other arrangements that should be specifically described in this regulation that have a principal purpose of circumventing section 1877.

The statute limits the CMP to not more than $100,000 for each such arrangement or scheme. In accordance with section 1128A of the Act, an assessment equal to twice the amount billed for the service may also be imposed. The Secretary is authorized to make a determination in the same proceeding to exclude the person from Medicare participation and to direct the appropriate State agency to exclude the person from participation in any State health care program.

In determining the amount of the penalty or assessment for each violation of § 1003.102(b)(9), we are proposing to apply six criteria—the 5 existing criteria set forth in § 1003.106(a) and a new criterion (§ 1003.106(a)(1)(vi)) that would look at the amount of ownership interests involved. The OIG specifically welcomes public comments on these criteria and on recommendations for applying other mitigating and aggravating factors in assessing CMPs under this statutory provision.

Violators of these provisions would be subject to the same notification, effectuation, and appeals procedures as CMP violations under section 1128A(a) of the Social Security Act which are set forth at 42 CFR part 1003.

IV. Regulatory Impact Statement

Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for regulations that meet one of the Executive Order criteria for a "major rule," that is, that would be likely to result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on completion, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As indicated above, the provisions contained in this rulemaking provide new authorities to the OIG to levy civil money penalties against persons or entities that file claims for services furnished on the basis of prohibited referrals or who engage in prohibited circumvention schemes as proscribed by statute. These provisions are a result of statutory changes and serve to clarify departmental policy with respect to the imposition of CMPs upon persons and entities who violate the statute. We believe that the great majority of providers and practitioners do not engage in such prohibited activities and practices discussed in these regulations, and that the aggregate economic impact of these provisions should, in effect, be minimal, affecting only those who have engaged in prohibited behavior in violation of statutory intent. As such, this rule should have no direct effect on the economy or on Federal or State expenditures.

Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act of 1980, Public Law 96–354 (5 U.S.C. 601 through 612), we are to prepare and publish a regulatory flexibility analysis unless the Secretary certifies that a regulation would not have a significant economic impact on a substantial number of small business entities. The analysis is intended to explain what effect that regulatory action will have on small business and other small entities, and to develop lower cost or burden alternatives.

We have determined that no regulatory impact analysis is required for these proposed regulations. In addition, while some penalties the Department could impose as a result of these regulations might have an impact on small entities, we do not anticipate that a substantial number of these small entities will be significantly affected by this rulemaking. Therefore, we have concluded that a regulatory flexibility analysis is not required for this rulemaking.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirements contained in both proposed and final rules. We have determined that the penalty provisions contained in this rulemaking do not contain such information collection requirements and will not increase the Federal paperwork burden on the public and private sectors.

V. Response to Comments

Because of the number of comments we receive on proposed regulations, we cannot acknowledge or respond to these comments individually. However, in preparing the final rule, we will consider all comments received in response to these penalty provisions and respond to them in the preamble to the document.

List of Subjects in 42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties.

TITLE 42—PUBLIC HEALTH

CHAPTER V—OFFICE OF INSPECTOR GENERAL—HEALTH CARE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR part 1003 would be amended as set forth below:

PART 1003—CIVIL MONEY PENALTIES, ASSESSMENTS AND EXCLUSIONS

1. The authority citation for part 1003 would be revised to read as follows:

Authority: 42 U.S.C. 1302, 1302a–7, 1320a–7a, 1320b–10, 1395u(j), 1395u(k), 1395nn(g), 1131(c) and 11137(b)(2).

2. Section 1003.100 would be amended by revising paragraph (a) and

paragraph (b)(1) (iv) and (v); and by adding a new paragraph (b)(1) (vi)–(ix) to read as follows:

§ 1003.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128(c), 1128A, 1140, 1842(j), 1842(k), and 1877(g) of the Social Security Act, and sections 421(c) and 427(b)(2) of Public Law 99–660 (42 1320a–7(c), 1320a–7a, 1320, 11131(c) and 11137(b)(2)).

(b) * * *

(1) * * *

(iv) Fail to report information concerning medical malpractice payments or who improperly disclose, use or permit access to information reported under part B of title IV of Public Law 99–660, and regulations specified in 45 CFR part 60;

(v) Misuse certain Medicare and Social Security program words, letters, symbols and emblems;

(vi) Have submitted certain prohibited claims under the Medicare or State health care programs;

(vii) Present or cause to be presented, a bill or claim for a clinical laboratory service that they know, or should know, was furnished in accordance with a referral prohibited under § 411.353 of this chapter;

(viii) Have collected amounts that they know or should know were billed in violations of § 411.353 of this chapter and have not refunded the amounts collected on a timely basis; or

(ix) Is a physician or entity that enters into an arrangement or scheme that the physician or entity knows, or should know, has as a principal purpose the assuring of referrals by a physician to a particular entity which, if made directly, would violate the provisions of § 411.353 of this chapter;

* * * * *

3. Section 1003.102 would be amended by revising paragraphs (a)(3), (a)(4) introductory text, and (a)(4)(iii); and by adding new paragraphs (a)(5), (b)(8) and (b)(9) to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

(a) * * *

(3) An item or service furnished during a period in which the person was excluded from participation in the program to which the claim was made in accordance with a determination made under sections 1128 (42 U.S.C. 1320a–7), 1128A (42 U.S.C. 1320a–7a), 1156 (42 U.S.C. 1320c–5), 1160(b) as in effect on September 2, 1982 (42 U.S.C. 1320c–9(b)), 1842(j)(2) (42 U.S.C. 1395u(j)), 1862(d) as in effect on August 18, 1987 (42 U.S.C. 1395y(d)), or 1866(b) (42 U.S.C. 1395cc(b));

(4) A physician's service (or an item or service) for which the person knew, or should have known, that the individual who furnished (or supervised the furnishing of) the service—

* * * * *

(iii) Represented to the patient at the time the service was furnished that the physician was certified in a medical specialty board when he or she was not so certified; or

(5) Payment which such person knows, or should know, may not be made under § 411.353 of this chapter.

(b) * * *

(8) Has not refunded on a timely basis amounts collected as the result of billing an individual, third party payer or other entity for a clinical laboratory service that was provided in accordance with a prohibited referral as described in § 411.353 of this chapter;

(9) Is a physician or entity that enters into—

(i) A cross referral arrangement, for example, whereby the physician owners of entity "X" refer to entity "Y," and the physician owners of entity "Y" refer to entity "X" in violation of § 411.353 of this chapter,

(ii) Any other arrangement or scheme that the physician or entity know, or should know, has a principal purpose of circumventing the prohibitions of § 411.353 of this chapter.

* * * * *

4. Section 1003.103 would be amended by revising paragraphs (a) and (b) to read as follows:

§ 1003.103 Amount of penalty.

(a) Except as provided in paragraphs (b), (c) and (d) of this section, the OIG may impose a penalty of not more than $2,000 for each item or service that is subject to a determination under § 1003.102.

(b) The OIG may impose a penalty of not more than $15,000 for each person with respect to whom a determination was made that false or misleading information was given under § 1003.102(b)(4), or for each item or service that is subject to a determination under § 1003.102(a)(4) or § 1003.102(b)(8). The OIG may impose a penalty of not more than $100,000 for an arrangement or scheme that is subject to a determination under § 1003.102(b)(9).

* * * * *

5. Section 1003.106 would be amended by revising paragraph (a)(1) introductory text and paragraph (a)(1)(v); and by adding new paragraphs (a)(1) (vi) and (vii) to read as follows:

§ 1003. 106 Determination regarding the amount of the penalty and assessment.

(a)(1) In determining the amount of any penalty or assessment in accordance with § 1003.102(a), (b)(1) to (b)(4), (b)(8) and (b)(9), the Department will take into account—

* * * * *

(v) The completeness and timeliness of the refund with respect to § 1003.102(b)(8);

(vi) The amount of financial interest involved with respect to § 1003.102(b)(9); and

(vii) Such other matters as justice may require.

* * * * *

Dated: July 12, 1993.

Bryan B. Mitchell,

Principal Deputy Inspector General.

Approved: August 26, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–25681 Filed 10–19–93; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 572

[Docket No. 92–28; Notice 3]

RIN No. 2127–AB85

Federal Motor Vehicle Safety Standards; Head Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Reopening of comment period; notice of public meeting.

SUMMARY: This notice reopens the comment period for a notice of proposed rulemaking, published February 8, 1993, regarding measures to prevent or reduce injury when a vehicle occupant's head strikes upper interior components during a crash. These components include pillars, side rails, headers, and the roof. The initial comment period closed April 9, 1993. NHTSA is reopening the comment period because the agency's examination of the initial public comments and subsequent submissions by commenters reveals that there is need for further public examination of the issues raised by the comments. To that end, NHTSA is reopening the comment period until December 1, 1993. In addition, the agency is conducting a public meeting to further facilitate the comment process.

DATES: *Public meeting:* A public meeting to receive oral comments concerning the

head impact protection will be held on November 15, 1993, beginning at 9 a.m., at the public meeting address listed below. Persons wishing to make oral presentations at the public meeting should contact Dr. Joseph Kanianthra at the address or telephone number listed below for an information contact, by November 8, 1993. Persons making oral presentations are requested, but not required, to submit 25 written copies of the full text of their presentation no later than November 15, 1993.

Written Comments: Written comments must be received on or before December 1, 1993.

ADDRESSES: *Public meeting:* The November 15, 1993 public meeting will be held in room 2230, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Written comments: All written comments must refer to the docket and notice number set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Submissions containing information for which confidential treatment is requested should be submitted (three copies) to Chief Counsel, National Highway Traffic Safety Administration, room 5219, 400 Seventh Street, SW., Washington, DC 20590, and seven additional copies from which the purportedly confidential information has been deleted should be sent to the Docket Section.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Kanianthra, Chief, Side and Rollover Crash Protection Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (202) 366–4924.

SUPPLEMENTARY INFORMATION: On February 8, 1993, NHTSA published a notice of proposed rulemaking (NPRM) proposing to amend Standard No. 201, *Occupant Protection in Interior Impact,* to require passenger cars and light trucks, buses and multipurpose passenger vehicles (LTVs) to incorporate measures to prevent or reduce injury when a vehicle occupant's head strikes upper interior components, including pillars, side rails, headers, and the roof, during a crash. The proposed amendments would add procedures and performance requirements for a new in-vehicle component test (58 FR 7506). The initial comment period for that proposal closed April 9, 1993.

To date, NHTSA has received numerous lengthy comments on the NPRM. In addition, at the request of the American Automobile Manufacturers Association (AAMA), Chrysler, Ford, General Motors, and Toyota, NHTSA has met with those parties to discuss their respective comments and testing. On September 30, 1993, AAMA requested an additional meeting with the agency concerning this rulemaking, or, in the alternative, a public meeting, a re-opening of the comment period, the issuance of a Supplemental Notice of Proposed Rulemaking, or a combination of the above.

To enable interested parties, including consumer safety groups and other non-industry parties, to further clarify or supplement their initial comments, NHTSA believes that it would be desirable to reopen the comment period until December 1, 1993, to provide a further opportunity to comment and to obtain responses from interested parties on several particular issues.

Questions

Leadtime

1. The NPRM proposed an effective date of the first September 1 that occurs following either a two or three year period beginning after the publication of the final rule, i.e., either the 3rd or 4th September 1 after publication. Commenters made a wide range of leadtime recommendations, ranging from full implementation on September 1, 1997, to a 5-year phase-in beginning September 1, 1999. NHTSA requests additional comments addressing the various leadtime recommendations. In particular, NHTSA requests specific information addressing assertions that earlier effective dates for full implementation are not practicable.

2. Some commenters suggested the need for longer leadtime for LTVs than for passenger cars. NHTSA requests comments on whether additional leadtime is necessary for LTVs, including the amount of additional leadtime needed and specific supporting information.

NHTSA also requests comments on whether, if the requirements were phased in, separate phase-in schedules for LTVs and passenger cars would provide manufacturers with more or less flexibility than a single phase-in for both types of vehicles. For example, if selecting a single phase-in schedule resulted in requiring compliance to begin later than would be the case if a schedule were set for cars alone, a manufacturer whose production consisted primarily of cars would gain compliance flexibility. Conversely, if selecting a single phase-in resulted in requiring compliance to begin earlier than would be the case if a schedule were set for LTVs alone, a manufacturer of primarily LTVs would lose compliance flexibility.

Test Procedure

3. Some commenters have suggested that, based on the proposed test procedure, an infinite number of tests would be needed for a manufacturer to certify compliance. This suggestion is based on a claim that the manufacturers would be unable to determine which impact locations and which impact angles would be most likely to produce noncompliances. NHTSA requests comments on whether these tests can be determined prior to testing, and if not, why not. If a commenter believes that they cannot be predicted with reasonable accuracy, NHTSA requests that the commenter address the effects on safety benefits and manufacturer costs from reducing either the range of possible impact locations and/or angles.

4. A number of commenters have indicated that they are conducting tests in accordance with the proposed procedures. NHTSA desires all test results, but emphasizes that, given the statutory deadline for this rulemaking, commenters *must* submit any test data by the new comment closing date in order to ensure that the agency will have time to consider them.

Proposed Exclusions

5. Some commenters have suggested excluding convertible vehicles, or sun visors and interior mirrors in all vehicles. Other commenters have suggested excluding convertible top frame/linkage mechanisms since adding padding to them would allegedly interfere with their operation. NHTSA requests additional comments on the need for such exclusions, including information on why it is impracticable to certify compliance of those components or vehicles.

6. Some commenters have requested exclusion of A-pillars (the pillars on either side of the windshield) based on the argument that increased safety belt usage and the introduction of air bags would essentially eliminate A-pillar impacts. However, highway crash data available to NHTSA indicate that some vehicle occupants are still impacting the A-pillar even when belts were used and/or air bags have deployed. NHTSA requests accident and test data addressing whether injuries from A-pillar impacts occur in air bag equipped vehicles or when belts are worn. In addition, NHTSA notes that it could not adopt any exclusion that would be inconsistent with the language in the Intermodal Surface Transportation

Efficiency Act that mandates rulemaking to "increase head impact protection from interior components" and expressly mentions "pillars" as being among the portions of the vehicle included in the term "interior components."

7. Some commenters have requested exclusion of the upper roof zone. NHTSA requests comments on how commenters would objectively define the upper roof zone.

8. NHTSA requests additional comments on the impacts of this proposal on final stage manufacturers and alterers. In particular, NHTSA requests comments on any changes that these parties would need to make in their practices in order to stay within the limits of the guidance given by the incomplete vehicle manufacturers for maintaining or achieving compliance with the proposed revisions to Standard No. 201.

9. NHTSA requests additional comments on the differences between passenger cars and LTVs, in terms of feasibility of particular countermeasures.

Neck Injury

10. In a recent meeting with the agency (noted in the docket at 92–28–NO2–049), Ford asserted that, in 1971, the agency had terminated rulemaking that would have required padding of the A-pillars because of the potential for neck injury from padded interior components. The possibility of neck injury from padded components was also raised in various written comments on the February 1993 NPRM. NHTSA requests commenters to submit accident or test data that documents the possibility of neck injury from padded components. The agency also seeks information on the extent to which the safety benefits calculated in the NPRM would be offset *if* neck injuries were to increase. Some commenters have also stated that the addition of an acceleration requirement along with the HIC requirement would reduce the potential for neck injury. The agency requests commenters to submit biomechanical information substantiating or negating these claims.

Test Device

11. Some commenters have asserted that the free motion headform (FMH) does not produce results that are as repeatable as the spherical headform preferred by others or is otherwise inferior to the spherical headform. The agency has comparative test data to show that the FMH is a repeatable test device for the purpose of this rule. NHTSA requests that commenters who believe the spherical headform is superior submit data justifying their beliefs.

Comments

The agency invites written comments from all interested parties. The agency notes that participation in the public meeting is not a prerequisite for the submission of written comments.

The agency emphasizes that it is not seeking a repetition of previous comments. All previous comments will be fully considered by NHTSA in its deliberations. Through this notice, the agency is seeking comments on the above issues or expressions of agreement or disagreement with comments previously submitted by other commenters.

It is requested but not required that 10 copies of each written comment be submitted. NHTSA provided a 60 day comment period for the February 1993 NPRM. In view of the statutory deadline in this rulemaking, the agency is limiting this additional comment period to 40 days.

No comment may exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to a comment without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit specified information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies form which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation, 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date.

Given the statutory deadline, it may not be possible for the agency to consider, and it is unlikely that the agency will consider, any comments filed after the closing date. Comments received too late for consideration in regard to the final rule may be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their written comments in the Docket Section should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receipt, the docket supervisor will return the postcard by mail.

Persons making oral presentations at the public meeting are requested, but not required, to submit 25 written copies of the full text of their presentation to Dr. Joseph Kanianthra no later than the day before the meeting. Presentations should be limited to 15–20 minutes. If time permits, persons who have not requested time, but would like to make a statement, will be afforded an opportunity to do so at the end of the day's schedule. Copies of all written statements will be placed in the docket for this notice. A verbatim transcript of the public meeting will be prepared and also placed in the NHTSA docket as soon as possible after the meeting. A schedule of the persons making oral presentation at the meeting will be available at the designated meeting area at the beginning of the public meeting.

No opportunity will be afforded the public to directly question participants in the meeting. However, the public may submit written questions to the presiding panel of Federal official for the panel to consider asking of particular participants. The presiding officials reserve the right to ask questions of all persons making oral presentations.

To facilitate communication, NHTSA will provide auxiliary aids to participants as necessary, during the meeting. Thus, any person desiring assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunications, devices for deaf persons (TDDs), readers, tape texts, braille materials, or large print materials and/or magnifying device), should contact Dr. Joseph Kanianthra at (202) 366–4724 by November 1, 1993.

Authority: 15 U.S.C. 1392, 1401, 1403, 1407, delegation of authority at 49 CFR 1.50.

Issued on October 14, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–25771 Filed 10–15–93; 1:29 pm]

BILLING CODE 4910–59–M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 821

Aviation Rules of Practice—General Revisions

AGENCY: National Transportation Safety Board.

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The NTSB is proposing numerous revisions to its rules of practice governing air safety enforcement and related cases. The overall purpose of the proposed changes is to improve the efficiency and fairness of these rules. Comments and replies to those comments are invited and will be considered in the formulation of final rules. Although a specified rule change may not be proposed in this notice, the Board here gives notice that this entire range of procedural rules is undergoing review and, as a result of comments and replies received, the Board may adopt final rules in addition to those proposed here.

DATES: Comments are due December 6, 1993. Any replies are due January 18, 1994.

ADDRESSES: An original and two copies of any comments and replies must be submitted to: Office of General Counsel, National Transportation Safety Board, 490 L'Enfant Plaza East, S.W., Washington, DC 20594. ATTENTION: Aviation Rules of Practice—General Revisions

Comments and replies may be inspected at the above address, Room 6333, from 8 a.m. to 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jane F. Mackall, (202) 382–6540.

SUPPLEMENTARY INFORMATION: The NTSB currently has rules, at 49 CFR Part 821, that govern practice and procedure in aviation safety enforcement and related cases. It is our intention in this proceeding to undertake a broad review of these rules, and make any changes that would improve their efficiency and fairness.[1]

We have identified a number of rules that we already believe should be revised. Our proposed changes and additions are reproduced at the end of this document, and the text that follows discusses our reasons for proposing each substantive change. We are well aware, however, that those using our rules likely have suggestions for other rule changes. In addition to responding to the changes we propose, commentors are, therefore, urged to recommend other rule changes they consider necessary or desirable. We do not, however, solicit at this time any comment on changes that may relate to the encouragement of settlement or the use of alternative dispute resolution. The Board considers this topic to be sufficiently important and complex to warrant separate consideration.

What follows is a rule-by-rule discussion of the changes we propose.[2]

1. Inquiries to the Board warrant adding a new § 821.3 in which the letter prefixes of our docket-numbering system are explained. The proposed rule is, we think, self-explanatory.

2. We propose to revise § 821.6(d) to require notices of appearance from parties' representatives as well as their attorneys. The need for such a rule should be self-evident, and most if not all representatives already provide this notice.

3. As a general rule, an original and at least 3 copies of pleadings are now required. In subsection § 821.7(b), we propose to reduce that number to an original and 1 copy and, otherwise, to minimize the number of copies required of the parties. The proposed revision to § 821.7(b) would indicate the exceptions to the 1-copy rule: (1) The initial "notice of appeal," be it an appeal to the Board of an order of the Administrator (§ 821.30 or .55) or a petition for review of the Administrator's denial of an application (§ 821.24), would now require an original and 4 copies; (2) the Administrator's complaint (§ 821.31 or .55) would require an original and 3 copies; and (3) briefs and petitions for reconsideration (§ 821.48 and .50) would require an original and 2 copies. We seek comment especially on whether all copy requirements should be in one location in the rules and, if so, whether they should be contained in § 821.7 or elsewhere. Finally, we would revise § 821.7(a) to include our 9-digit zip code, and to permit filing and service of pleadings via facsimile transmission.[3] We also seek comment on the alternative of a uniform rule requiring an original and 4 copies. Our concern with such a rule, however, is that it would require copies that the Board does not need to process its caseload.

4. Current rule § 821.8, governing various aspects of service, has caused some confusion. The proposed revision attempts to simplify and clarify the rule and remove repetitive directions. In addition, in (a), we add a sample certificate of service to eliminate confusion on the part of non-attorney representatives, and propose to discontinue serving the Administrator via certified mail, using first-class mail instead.

We here give notice that, concurrent with adoption of any rule changes here, we will only serve respondent's attorney or representative by certified mail; respondent, who we also serve, will be served by regular, first-class mail, unless acting *pro se*. No rule change is needed to accomplish this change as to respondents.

5. We propose, in § 821.9, to offer a new provision for use in considering requests to file *amicus curiae* briefs that will liberalize the rule announced in *Administrator* v. *Essery*, 5 NTSB 609, 612 (1985), to bring our practice more into accord with the Federal rules used in appellate practice.

6. Subsection § 821.12(b), which requires agency approval for withdrawal of any pleading, can promote delay and unnecessary expense to the Board and the parties. We can see little reason, for example to continue to require an agency order authorizing the Administrator to withdraw his complaint or authorizing a respondent or petitioner to withdraw a challenge to an action by the Administrator. Dismissal of proceedings can be more efficiently handled simply with a notice to the decisionmaker, and a subsequent implementing order discontinuing the proceeding. In changes to (a), we also propose to codify certain basic due process and statutory principles regarding objections to complaint amendments. For one, we intend to clarify that, even if pleadings are amended more than 15 days before the hearing, the law judge can entertain objection to such amendment.

7. Our proposed changes to § 821.19(b) and .35(a) address two concerns. First, we propose to eliminate the requirement that a case be assigned to a law judge before discovery (of any sort) may be undertaken. Especially in emergency cases, this delay is counterproductive. Second, the revision reflects a new procedure for handling issues arising in cases prior to assignment of a law judge. Subsection(a) of § 821.35 deals, in part, with the chief judge's role in case processing prior to assignment to a particular law judge. We

[1] We have also proposed in a separate, pending proceeding, *Rules of Practice in Civil Penalty Proceedings*, 58 FR 11379 (February 25, 1993), other changes to Part 821. Readers are urged to review that document as well.

[2] We discuss all substantive changes. There are also numerous minor changes in wording, with no meaning change intended, not all of which are specifically discussed. The current and proposed rules should, therefore, be closely compared.

[3] We do not propose to include Board FAX numbers, as they may, and do, change.

proposed to authorize the chief judge to delegate his responsibility. We do not propose to direct a particular approach to doing so, but propose to allow the chief judge to adopt a method of his choosing (for example, "duty days," on which a named judge is on call to resolve matters arising that day).

8. We propose a further change to section 821.19 by the addition of a new subsection (d) to make explicit that the failure to comply with order discovery or a failure timely to cooperate in a request to preserve evidence may result in an adverse inference or finding, evidence preclusion or dismissal. By including the failure to preserve timely requested evidence we intend to reflect the fact that the Administrator typically has control over much of the evidence that will be required for a full record in cases that have air traffic control involvement. When such evidence has been requested in a timely fashion, we believe it is incumbent on the Administrator to insure its safekeeping. See *Administrator* v. *Ryan*, NTSB Order EA–3238 (1990).[4]

9. In Section § 821.20(b), we propose to codify our decision in *Administrator* v. *Flowers*, NTSB Order EA–3594 (1992), in which we considered declining to process respondent's appeal from the initial decision in light of his failure to compensate a witness.

10. In § 821.20(c), we seek to bring our enforcement rules for testimony by Board employees more in line with those that apply to the testimony of our employees in accident-related civil proceedings. It has been a foundation of our cooperation with the Administrator in accident investigation work that the Administrator will pursue enforcement-related functions separately. To encourage a free flow of information to our investigators, it is important that we separate to the degree possible the work of safety-related investigation from that of enforcement. It is similarly important that we safeguard our resources from unnecessary involvement in enforcement litigation. The rule proposed attempts to do this in enforcement cases where Board employees are sought as witnesses. Our proposal, however, does not prevent the discovery of the results of NTSB work, such as destructive testing that could not be replicated, nor does it preclude discovery of other factual observations exclusively within the Board's control, other than those that are drawn from statements that may have been offered by the respondent. Opinion testimony would be specifically prohibited.

11. Section 821.24(d), dealing with medical proceedings, is proposed to be revised to reflect the superseding of the petition for exemption procedure by the request for special issuance process. We also propose to remove language that appears to have no relevance to Board procedures. That is, we see no need for our rule to include provisions dealing with FAA requirements. Paragraph (e) is proposed to revised to address situations where new medical evidence is late filed.

12. Section 821.31(a), dealing with filing of the complaint, has produced some confusion in the past, as we have had to address in case law whether "filed upon the Administrator" meant the date of transmission (as our service rules provided) or the date of receipt. *See Administrator* v. *Simonton*, NTSB Order EA–3734 (1992). We propose to clarify this matter in the rule itself by changing "filed upon the Administrator" to "received by the Administrator." (Conforming amendments reflecting the number of needed copies are also proposed.)

13. The proposed change to subsection (a) of § 821.37, dealing with the selection of the place for hearing, reflects the Board's need to conserve resources. The Board believes that hearings outside the United States should be the ultra-extraordinary event, and rarely if ever would be justified. It is this sentiment that is proposed to be included in the rule. Other changes to this rule reflect only editorial amendments shorten it with no change in meaning intended.

14. We proposed to change the evidence rule found in § 821.38 to clarify the handling of hearsay in Board proceedings. It is our proposal to approach hearsay from the standpoint of those circumstances that might offer some intrinsic guarantee of its trustworthiness. It is beyond contention that hearsay is widely admitted in administrative proceedings with its trustworthiness going to the weight and credibility accorded it. This approach is equally appropriate where the evidence proffered contains hearsay within hearsay. We note that the Federal Rules of Evidence also permit hearsay within hearsay where there are suitable exceptions pertaining to each level of hearsay. We believe a liberal approach to be particularly well justified in the context of administrative hearings. Much of the concern over hearsay relates to the potential impact on juries untrained in analysis of evidence and testimony. NTSB enforcement proceedings are, of course, tried before hearing officers with the experience and judgment to accord hearsay only such weight as is warranted in the circumstances. Our proposal here overrules statements to contrary in *Administrator* v. *Niolet*, 2 NTSB 2846 (1980), and a few similar cases where the Board excluded double hearsay as a matter of course, without considering any extrinsic or intrinsic indicia of trustworthiness. We also intend our proposed amendment to this section to make certain that evidence that is not accepted at hearing can be preserved (via an offer of proof) for consideration by the full Board in the event of appeal.

In § 821.38(c), we propose to add language providing that, if documents are exchanged prior to a hearing and an objection regarding authenticity is not entered within a reasonable time before the hearing, any such objection made later may be deemed to have been waived.

15. It has been suggested that the second sentence of § 821.42(c), dealing with extensions of time for appeals, be moved to .42(a) to clarify its applicability to oral as well as written decisions. We propose, instead, to transfer this sentence to § 821.47. We also propose to delete the remainder of .42(c), as service of written initial decisions is already covered in § 821.8.

16. We propose to amend § 821.43 to eliminate the references to Board review on its own motion. We have not used this inherent authority in recent years, relying instead on the parties to bring to our attention cases meriting review. The initial decision's lack of precedential value eliminates concerns that unreviewed decisions might otherwise raise. Moreover, the different time periods in § 821.47 for notices of appeal (10 days), as opposed to the time limit for the Board's taking review on its own motion under § 821.43 (20 days), occasionally have produced confusion regarding due dates.

17. The proposed revisions to § 821.48(e) would adopt provisions of Federal Rule of Appellate Procedure 28(j), allowing post-briefing filing of citations to newly-decided, relevant cases.

18. We propose to revise §§ 821.49 and 821.57(c) to indicate that, if the Board raises a new issue it finds necessary to resolve the proceeding, it will afford the parties the opportunity to submit argument *if* it believes that such an opportunity is necessary or appropriate. Such an opportunity will not be available as a matter of right, for example, if the new issue is one of established law for which no further argument is necessary We see this change as simply reflecting common

[4] We are speaking here to the issue of air traffic control tapes, and the FAA's standard preservation time, absent a specific request, of 15 days.

sense, current practice, and the public interest in avoiding unnecessary delay. It should not be interpreted as any intention by the Board to reduce due process rights of the parties.

19. We propose to amend § 821.54 to apply not only to emergency proceedings under Section 609(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. App. 1429(a), but to proceedings under Section 609(c)(3), where the Administrator issues "immediately effective" orders. See *Administrator* v. *Zacher*, NTSB Order EA-3972 (1993).

20. We propose to add a new section (f) to § 821.55 to establish clearly the use of discovery in emergency proceedings. Despite our consistent statements on this point, rule changes are necessary to leave no doubt that discovery is available in emergency cases and to ensure that this discovery is effective in light of the short time frame for deciding these cases. Other substantive changes in this rule are intended to eliminate confusion in our procedure.

21. Changes proposed to §§ 821.56 and .57 would define and revise the time within which an emergency hearing date shall be set, the time within which the hearing must be held, the time replies are due, and the method of service. These changes are intended to provide greater time for record development and, on the whole, to use better the 60-day period allowed for emergency proceedings.

22. We propose to amend § 821.63 to provide for sanctions against counsel or other representatives in the event of violation of the Board's ex parte rules. At present, sanction for ex parte violations is seemingly limited to imposition upon the party, as opposed to the party's representative, without regard to whether the party was involved in the violation. Since there may be occasions where the interests of justice will not be furthered by holding a party responsible for actions of counsel, we wish to make available a broader range of remedial options. See 49 CFR 821.6(a).

23. Finally, we propose to amend § 821.64 to require that petitions for stay pending judicial review be filed before the effective date of the order. Now, there is no due date, and petitions are routinely filed after the 30 day effective date of our order.

As required by the Regulatory Flexibility Act, we certify that the amended rules will not have a substantial impact on a significant number of small entities. The rules are not major rules for the purposes of Executive Order 12291. We also conclude that this action will not significantly affect either the quality of the human environment or the conservation of energy resources, nor will this action impose any information collection requirements requiring approval under the Paperwork Reduction Act.

List of Subjects in 49 CFR Part 821

Administrative practice and procedure, Airmen, Aviation safety.

Accordingly, 49 CFR Part 821 is proposed to be amended as set forth below.

PART 821—RULES OF PRACTICE IN AIR SAFETY PROCEEDINGS

1. The authority citation for Part 821 continues to read as follows:

Authority: Title VI, Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1421 *et seq.*); Independent Safety Board Act of 1974, Pub. L. 93-633, 88 Stat. 2166 (49 U.S.C. App. 1901 *et seq.*), and FAA Civil Penalty Administrative Assessment Act of 1992, Pub. L. 102-345 (49 U.S.C. App. 1471), unless otherwise noted.

2. A new § 821.3 is proposed to be added to read as follows:

§ 821.3 Description of docket numbering system.

In addition to sequential numbering of cases as received, each case formally handled by the Board receives a letter prefix. These letter prefixes reflect the case type: "SE" for the safety enforcement (suspension/revocation) docket; "SM" (safety medical) for an enforcement case involving a medical application; "SR" for a case involving safety registration issues under 49 U.S.C. 1401, *et seq.*; "CD" for certificates of denial (*see* 49 U.S.C. 1422); a new "CP" for cases in which the Administrator seeks a civil penalty; and "EAJA" for applications seeking Equal Access to Justice Act awards.

3. Section 821.6 is proposed to be amended by revising paragraph (d) to read as follows:

§ 821.6 Appearances and rights of witnesses.

* * * * *

(d) Any party to a proceeding who is represented by an attorney or party representative shall notify the Board of the name and address of that attorney or representative. In the event of a change in attorney or representative of record, a party shall notify the Board, in the manner provided in § 821.7(a), and the other parties to the proceeding, prior to the attorney or representative participating in any way, including the filing of documents, in any proceeding.

4. Section 821.7 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 821.7 Filing of documents with the Board.

(a) *Filing address, date and method of filing.* Generally, documents are to be filed with the Office of Administrative Law Judges. However, subsequent to the filing of a notice of appeal from a law judge's final decision or order (written or oral), all documents should be directed to the proper office at the National Transportation Safety Board, Washington, DC 20594-2000. Filing of any document shall be by personal delivery, by first class mail, or by facsimile (confirmed by personal or mail delivery). Unless otherwise shown to be inaccurate, such documents shall be deemed filed on the date of personal delivery, on the send date shown on the facsimile (provided service has been confirmed through first class mail or personal delivery) and, for service by mail, on the mailing date shown on the certificate of service, on the date shown on the postmark if there is no certificate of service, or on the mailing date shown by other evidence if there is no certificate of service and no postmark.

(b) *Number of copies.* Unless otherwise specified (*see* 49 CFR 821.24, 821.30, 821.31, 821.48, 821.50, and 821.55), an executed original and 1 copy of each document shall be filed with the Board. Copies need not be signed, but the name of the person signing the original shall be shown.

* * * * *

5. Section 821.8 is proposed to be revised to read as follows:

§ 821.8 Service of documents.

(a) *Who must be served.* (1) Copies of all documents filed with the Board must be served on all parties to the proceeding by the person filing them. A certificate of service shall accompany all documents when they are tendered for filing and shall certify concurrent service on the Board and the parties. Certificates of service shall be in substantially the following form:

"I hereby certify that I have this day served the foregoing document(s) on the following parties' counsel or designated representatives [or on the party, if without counsel or representative] at the address indicated by [specify the method of service: first class mail, personal service, etc.]"

[indicate names and addresses here]

Dated at _____, this ____day of _____, 19 ____.

(Signature) _____ _____

For _____ _____

Capacity _____"

(2) Service shall be made on the person designated in accordance with § 821.7(f) to receive service. If no such person has been designated, service shall be made on the party.

(b) *Method of service.* Except as set forth in this section and as required by § 821.57(b), the method of service is the same as that set forth in § 821.7(a) for filing of documents. The Board will serve orders, notices of hearing, and written initial decisions on attorneys or representatives designated under § 821.7(f) or, if no attorney or representative, on the party itself, and will do so by certified mail, except that service on the Administrator will be by first-class mail.

(c) *Where service shall be made.* Except for personal service, addresses for service of documents shall be those in the official record or, if none in the case of the Federal Aviation Administration, the Office of the Chief Counsel, Washington, DC 20591. In the case of an agent designated by an air carrier under section 1005(b) of the Act, service of any sort may be accomplished only at the agent's office or usual place of residence.

(d) *Presumption of service.* There shall be a presumption of lawful service:

(1) When acknowledgement of receipt is by a person who customarily or in the ordinary course of business receives mail at the residence or principal place of business of the party or of the person designated under § 821.7(f); or

(2) When a properly addressed envelope, sent to the most current address in the official record by regular, registered, or certified mail, has been returned as undeliverable, unclaimed, or refused.

(e) *Date of service.* The date of service shall be determined in the same manner as the filing date is determined under § 821.7(a).

6. Section 821.9 is proposed to be revised to read as follows:

§ 821.9 Intervention and amicus appearance.

(a) *Intervention.* Any person may move for leave to intervene in a proceeding and may become a party thereto, if it is found that such person may be bound by any order to be entered in the proceeding, or that such person has a property, financial, or other legitimate interest that will not be adequately represented by existing parties, and that such intervention will not unduly broaden the issues or delay the proceedings. Except for good cause shown, no motion for leave to intervene will be entertained if filed less than 10 days prior to hearing. The extent to which an intervenor may participate in the proceedings is within the law judge's discretion, and depends on the above criteria.

(b) *Amicus curiae briefs.* A brief of *amicus curiae* in matters on appeal from initial decisions may be filed if accompanied by written consent of all the parties, or if, in the opinion of the Board's General Counsel, the brief will not unduly broaden the matters at issue or unduly prejudice any party to the litigation. A brief may be conditionally filed with motion for leave. The motion shall identify the interest of the movant and shall state the reasons why a brief of *amicus curiae* is desirable. Such brief and motion shall be filed within the time allowed the party whose position as to affirmance or reversal the brief would support, unless cause for late filing is shown, in which event the General Counsel may provide an opportunity for response as a condition of acceptance.

7. Section 821.12 is proposed to be revised to read as follows:

§ 821.12 Amendment and withdrawal of pleadings.

(a) *Amendment.* At any time more than 15 days prior to the hearing, a party may amend his pleadings by filing the amended pleading with the Board and serving copies on the other parties. After that time, amendment shall be allowed only at the discretion of the law judge. In the case of amendment to an answerable pleading, the law judge shall allow the adverse party a reasonable time to object or answer. Amendments to complaints shall be consistent with the informal conference requirements of 49 U.S.C. App. 1429(a).

(b) *Withdrawal.* Except in the case of withdrawal of an appeal to the Board, withdrawal of a petition for review, withdrawal of a complaint, or withdrawal of an appeal from an initial decision, a party may withdraw pleadings only on approval of a law judge or the Board.

8. Section 821.19 is proposed to be amended by revising paragraph (b) and adding a new paragraph (d) to read as follows:

§ 821.19 Depositions and other discovery.

* * * * *

(b) *Exchange of information by parties.* At any time before hearing, at the instance of either party, the parties or their representatives may exchange information, such as witness lists, exhibit lists, curricula vitae and bibliographies of expert witnesses, and other data. In the event of a dispute, either the assigned law judge or another law judge delegated this responsibility (if a law judge has not yet been assigned) may issue an order directing compliance with any ruling made with respect to discovery. Any party may also use written interrogatories, requests to admit, or other discovery tools. Copies of discovery requests and responses shall be served on the law judge assigned to the proceeding.

* * * * *

(d) *Failure to provide or preserve evidence.* The failure of any party to comply with an order of an administrative law judge compelling discovery or to cooperate in a timely request for the preservation of evidence may result in a negative inference against that party with respect to the matter sought and not provided or preserved, a preclusion order, or dismissal.

9. Section 821.20 is proposed to be amended by revising paragraphs (b) and (c) to read as follows:

§ 821.20 Subpoenas, witness fees, and appearances of Board Members, officers, or employees.

* * * * *

(b) *Witness Fees.* Witnesses shall be entitled to the same fees and mileage as are paid to witnesses in the courts of the United States. The fees shall be paid by the party at whose instance the witness is subpoenaed or appears. The Board may decline to process a proceeding further should a party fail to compensate a witness pursuant to this paragraph.

(c) *Board Members, officers, or employees.* In order to encourage a free flow of information to the Board's accident investigators, the Board disfavors the use of its personnel in enforcement proceedings. Therefore, the provisions of paragraph (a) of this section are not applicable to Board Members, officers, or employees, or the production of documents in their custody. Applications for the attendance of such persons or the production of such documents at hearing shall be addressed to the chief law judge or the assigned law judge, as the case may be, in writing, and shall set forth the need of the moving party for such testimony, and a showing that such testimony is not now, or was not otherwise, reasonably available from other sources. The law judge shall not permit such testimony or documentary evidence to include any opinion testimony, or any account of statements of a respondent, made during the Board's investigation of any accident.

10. Section 821.24 is proposed to be amended by revising paragraphs (a), (d) and (e) to read as follows:

§ 821.24 Initiation of proceedings.

(a) *Petition for review.* Where the Administrator has denied an application for the issuance or renewal of an airman certificate, the applicant may file with the Board a petition for review of the Administrator's action. An original and 4 copies of such petition shall be filed within 60 days from the time the Administrator's action was served on petitioner and shall contain a short statement of the facts on which petitioner's case depends and a statement of the requested action. The petition may be in letter form.

* * * * *

(d) *Stay of proceeding pending request for special issuance (restricted certificate).* Where a request for special issuance (restricted certificate) has been filed with the Administrator pursuant to the Federal Aviation Regulations, the Board will hold a petition for review in abeyance pending final action by the Administrator or for 180 days from the date of the Administrator's initial certificate denial, whichever occurs first.

(e) *New evidence.* If petitioner has undergone medical testing or evaluation in addition to that already submitted or known to the Administrator, and wishes to introduce the results into the record, the new medical evidence must be served on the Administrator at least 30 days before the hearing. Absent good cause, failure timely to serve any new evidence will result in its exclusion from the record. The Administrator may amend his answer within 10 days to respond to any new evidence.

11. Section 821.30 is proposed to be amended by revising paragraph (a) to read as follows:

§ 821.30 Initiation of proceedings.

(a) *Appeal.* A certificate holder may file with the Board an appeal from an order of the Administrator amending, modifying, suspending, or revoking a certificate. An original and 4 copies of such an appeal shall be filed with the Board within 20 days from the time of service of the order and be accompanied with proof of service on the Administrator.

* * * * *

12. Section 821.31 is proposed to be amended by revising paragraph (a) to read as follows:

§ 821.31 Complaint procedure.

(a) *Filing, time of filing, and service on respondent.* The order of the Administrator from which an appeal has been taken shall serve as the complaint. An original and 3 copies of the complaint shall be filed by the Administrator with the Board within 5 days after the notice of appeal has been received by the Administrator.

* * * * *

13. Section 821.35 is proposed to be amended by revising paragraph (a) to read as follows:

§ 821.35 Assignment, duties, and powers.

(a) *Assignment of law judge and duration of assignment.* The chief law judge shall assign a law judge to preside over the proceeding. Until such assignment, motions, requests, and documents shall be addressed to the Docket Section, Office of Administrative Law Judges, for handling by the chief law judge, who may handle these matters personally or may delegate all or any of them to other law judges for decision. After assignment, all motions, requests, and documents shall be addressed to that law judge. The authority of the assigned law judge shall terminate upon certification of the record to the Board, or upon expiration of the period within which appeals from initial decisions may be filed, or upon the law judge's withdrawal from the proceeding.

* * * * *

14. Section 821.37 is proposed to be amended by revising paragraph (a) to read as follows:

§ 821.37 Notice of hearing.

(a) *Notice.* The chief law judge (or his law judge delegate) or the law judge to whom the case is assigned shall set a reasonable date, time and place for the hearing. The notice of the hearing shall be served at least 30 days in advance thereof, and shall include notice of the nature of the hearing. The law judge may set the hearing fewer than 30 days after the notice of hearing is served if the parties agree to an earlier hearing date. In setting the hearing date, due regard shall be given to any need for discovery. In setting the place of the hearing, due regard shall be given to the convenience of the parties and to conservation of Board Funds. The location of the witnesses and the suitability of a site served by a schedule air carrier are added factors to be considered in setting the hearing location, as is Board policy that foreign-held hearings are appropriate only in the most extraordinary circumstances.

* * * * *

15. Section 821.38 is proposed to be revised to read as follows:

§ 821.38 Evidence.

(a) Every party shall have the right to present a case-in-chief or defense by oral or documentary evidence, to submit evidence in rebuttal, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Hearsay evidence (including hearsay within hearsay where there are acceptable circumstantial indicia of trustworthiness) is admissible.

(b) All material and relevant evidence should be admitted, but a law judge may exclude unduly repetitious evidence. Any evidence that is offered and excluded should be described (via an "offer of proof"), and that description should be made a part of the record.

(c) A party that does not object to the authenticity of an intended exhibit within a reasonable time before the hearing may be deemed to have waived that objection.

16. Section 821.42 is proposed to be amended by removing paragraph (c) and redesignating paragraph (d) as (c).

17. Section 821.43 is proposed to be revised to read as follows:

§ 821.43 Effect of law judge's initial decision and filing of an appeal therefrom.

If an appeal from the initial decision is not timely filed with the Board by a party, the initial decision shall become final but shall not be precedent binding on the Board. The filing of a timely appeal shall stay the initial decision.

18. Section 821.47 is proposed to be revised to read as follows:

§ 821.47 Notice of appeal.

A party may appeal from a law judge's order or from the initial decision by filing with the Board and serving on the other parties (pursuant to § 821.8) a notice of appeal within 10 days after an oral initial decision has been rendered or a written decision or an order has been served. At any time before the date for filing an appeal from an initial decision or order has passed, the law judge or the Board may, for good cause shown, extend the time within which to file an appeal, and the law judge may also reopen the case for good cause on notice to the parties.

19. Section 821.48 is proposed to be amended by revising paragraphs (e) and (f) to read as follows:

§ 821.48 Briefs and oral argument.

* * * * *

(e) *Other briefs.* Subsequent to brief filing, parties may file citations to supplemental authorities. This procedure may be used only for identifying new, relevant decisions, not to correct omissions in briefing or to respond to a reply. No argument may be included in such filings. Parties shall submit, with any decision, a reference to the page of the brief to which the decision pertains. Any response shall be filed within 10 days and shall be similarly limited.

(f) *Number of copies.* An original and 2 copies of briefs shall be filed with the Board.

* * * * *

20. Section 821.49 is proposed to be revised to read as follows:

§ 821.49 Issues on appeal.

(a) On appeal, the Board will consider only the following issues:

(1) Are the findings of fact each supported by a preponderance of reliable, probative, and substantial evidence?

(2) Are conclusions made in accordance with law, precedent, and policy?

(3) Are the questions on appeal substantial?

(4) Have any prejudicial errors occurred?

(b) If the Board determines that the law judge erred in any respect or that his order in his initial decision should be changed, the Board may make any necessary findings and may issue an order in lieu of the law judge's order or may remand the case for such purposes as the Board may deem necessary. The Board on its own initiative may raise any issue, the resolution of which it deems important to a proper disposition of the proceedings. If necessary or appropriate, a reasonable opportunity shall be afforded the parties to submit argument.

21. Section 821.50 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 821.50 Petitions for rehearing, reargument, reconsideration, or modification of an order of the Board.

(a) *General.* Any party to a proceeding may petition for rehearing, reargument, reconsideration, or modification of a Board order on appeal from an initial decision. Any such petitions shall be served on all other parties to the proceeding within 30 days after service of the Board's order on appeal from the initial decision. Initial decisions that have become final because they were not appealed may not be the subject of petitions under this section.

(b) *Number of copies.* An original and 2 copies of petitions shall be filed with the Board.

* * * * *

22. Section 821.54 is proposed to be amended by revising paragraph (a) to read as follows:

§ 821.54 General.

(a) *Applicability.* These rules shall apply to any order issued by the Administrator under section 609 of the Act: as an emergency order; as an order not designated as an emergency order, but is later amended to be an emergency order; and any order designated as immediately effective or effective immediately.

* * * * *

23. Section 821.55 is proposed to be amended by revising paragraphs (a), (b), and (c) and adding a new paragraph (f) to read as follows:

§ 821.55 Appeal, complaint, answer to the complaint, and motions.

(a) *Time within which to appeal.* The certificate holder may appeal within 10 days after the service of the Administrator's emergency order. The certificate holder shall serve a copy of his appeal on the Administrator.

(b) *Form and content of appeal.* The appeal may be in letter form. It shall identify the Administrator's order and the certificate affected, shall recite the Administrator's action, and shall identify the issues of fact or law on which the appeal is based, and the relief sought. An original and 4 copies of the appeal shall be served on the Board.

(c) *Complaint.* Within 3 days after receipt of the appeal, the Administrator shall file with the Board an original and 3 copies of his emergency order as his complaint, and serve a copy on the respondent.

* * * * *

(f) *Discovery.* Discovery is authorized in emergency proceedings and, given the short time available, parties are directed to cooperate to ensure timely completion prior to the hearing. Discovery requests shall be served as soon as possible after initiation of the proceeding. Motions to compel production shall be expeditiously filed, and will be promptly decided. Time limits for compliance with discovery requests shall accommodate and not conflict with the schedule set forth in §§ 821.56 and 821.57. The provisions at § 821.19 shall apply, modified as necessary to reflect applicable deadlines.

24. Section 821.56 is proposed to be amended by revising paragraph (a) to read as follows:

§ 821.56 Hearing and initial decision.

(a) *Notice of hearing.* Immediately upon notification by the Administrator to the Board that an emergency exists, and in no case later than 5 days after such notification, the date and place for hearing shall be set and the parties notified. The hearing shall be set for a date no later than 25 days after service of the complaint. To the extent not inconsistent with this paragraph, the provisions of § 821.37(a) also apply.

* * * * *

25. Section 821.57 is proposed to be amended by revising paragraphs (b) and (c) to read as follows:

§ 821.57 Procedure on appeal.

* * * * *

(b) *Briefs and oral argument.* All briefs in emergency cases shall be served via overnight delivery or facsimile confirmed by first class mail. Within 5 days after the filing of the notice of appeal, the appellant shall file a brief with the Board and serve a copy on the other parties. Within 5 days after service of the appeal brief, a reply brief may be filed, with copies served (as provided above) on other parties. The briefs shall comply with the requirements of § 821.48(b) through (g). Appeals may be dismissed by the Board on its own initiative or on motion of a party, notably in cases where a party fails to perfect the notice of appeal by filing a timely brief. When a request for oral argument is granted, the Board will give 3 days' notice of such argument.

(c) *Issues on appeal.* The provisions of § 821.49 shall apply to issues on appeal. However, the Board may upon its own initiative raise any issue, the resolution of which it deems important to a proper disposition of the proceeding. In such a case, and if found necessary or appropriate, the parties shall be afforded not more than 2 days to submit argument.

* * * * *

26. Section 821.63 is proposed to be amended by revising paragraph (b) to read as follows:

§ 821.63 Requirements to show cause and imposition of sanction.

* * * * *

(b) The Board may, to the extent consistent with the interests of justice and the policy of the underlying statutes it administers, consider a violation of this subpart sufficient grounds for a decision adverse to a party who has knowingly committed or knowingly caused a violation to occur. Alternatively, the Board may impose sanction, including suspension of the privilege of practice before the Board, on the party's attorney or representative, where an infraction has been committed by that attorney or representative and penalizing the party represented is not in the interest of justice.

27. Section 821.64 is proposed to be revised to read as follows:

§ 821.64 Judicial review.

(a) *General.* Judicial review of a final order of the Board may be sought as provided in section 1006 of the Act (49 U.S.C. App. 1486) and section 304(d) of the Independent Safety Board Act of

1974 (49 U.S.C. App. 1903(d)) by filing a petition for review with the appropriate United States court of appeals within 60 days of the date of entry (service date) of the Board's order.

(b) *Stay pending judicial review.* No petition for stay pending judicial review will be entertained if it is received by the Board after the effective date of the Board's order. If a stay action is to be timely, any petition must be filed sufficiently in advance of the effective date of the Board's order to allow for the possibility of a reply and to allow for Board review.

Issued in Washington, DC on this 13th day of October, 1993.

Carl W. Vogt,

Chairman.

[FR Doc. 93–25619 Filed 10–19–93; 8:45 am]

BILLING CODE 7533–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public hearing.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public hearing on draft Amendment 7 to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic. Amendment 7 deals with the allocation of commercial Gulf group king mackerel off Florida. Environmental conditions may affect the seasonal distribution of these migratory fish, giving more fishing access in different geographic areas. The Council is proposing to divide the quota equally for the areas north and southwest of the Dade-Monroe County line, just south of Miami. In the southwestern area the quota would be further divided equally between net and hook-and-line fishermen.

DATES: Written comments on the proposed action must be received by November 12, 1993. The hearing is scheduled for Tuesday, November 9, 1993, from 7 p.m., to 10 p.m..

ADDRESSES: Comments should be addressed to Terrance R. Leary, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL 33609. The hearing will be held at the Reach Hotel, 1435 Simonton Street, Key West, Florida (305–296–5000).

FOR FURTHER INFORMATION CONTACT: Terrance R. Leary, 813–228–2815.

SUPPLEMENTARY INFORMATION: The hearing is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aides should be directed to Beverly Badillo at the above Council address by November 2, 1993.

Dated: October 15, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–25773 Filed 10–6–93; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 201
Wednesday, October 20, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Evaluation of the Master Development Plan for the Proposed "Snowcreek Ski Area"

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The Forest Service, Department of Agriculture, will prepare a supplemental environmental impact statement (SEIS) for the proposed Master Development Plan for development of a destination, alpine ski resort on National Forest System lands. The proposed project is located at the Sherwin Bowl designated winter sports site on the Mammoth Ranger District, Inyo National Forest, Mono County, California. The document being supplemented is the Sherwin Ski Area Final Environmental Impact Statement. The SEIS will evaluate at least three alternatives, the MDP as proposed, the MDP as modified in response to issues developed during scoping, and denial of the MDP (the No Action alternative). In addition, the agency gives notice of the environmental analysis and decision making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by January 4, 1994.

ADDRESSES: Submit written comments and suggestions concerning the Master Development Plan to Dennis Martin, Forest Supervisor, Inyo National Forest, 873 North Main Street, Bishop, CA 93514, ATTN: Sherwin Ski Area.

FOR FURTHER INFORMATION CONTACT: Direct questions about this supplemental environmental impact statement to Bob Hawkins, Winter Sports Specialist, Inyo National Forest, 873 North Main Street, Bishop, CA 93514 or telephone (619) 873–2400.

SUPPLEMENTARY INFORMATION: The Chief of the Forest Service designated Sherwin Bowl as a "winter sports site" in 1967. Detailed studies began in the early 1980's, in response to a proposal from the private sector to develop the "Sherwin Ski Area". The studies and analysis culminated in the Sherwin Ski Area Final Environmental Impact Statement (FEIS), released in October of 1990. The FEIS evaluated the need for additional alpine skiing capacity, considered alternative sites that would meet the purpose and need of the proposed ski area development, and analyzed the consequences of different development scenarios at the Sherwin Bowl site. The Record of Decision released with the FEIS selected Alternative 5, the agency preferred alternative. Alternative 5 provided a conceptual design of a ski area that would develop terrain for 8,000 skiers in the Sherwin Bowl and Solitude Canyon areas of the Mammoth Ranger District. By selecting a development alternative, the decision addressed several issues critical to this step in the approval process. These issues were alternative sites, demand for skiing, and design capacity. The decision found that demand for alpine skiing on the Inyo National Forest does exist, that the Sherwin Bowl site is the appropriate choice for development, and that the target design capacity of the area is 8,000 skiers. Several of these issues were raised during the administrative review (appeals) process, with the original decision upheld by higher level Forest Service line officers. As a result, the issues of alternatives sites, demand for skiing, and total design capacity will not be revisited in the SEIS.

Although the decision did not approve construction of the ski area, it did allow for the issuance of a special use permit to the proponent to prepare a Master Development Plan (MDP). The MDP is intended to provide the specific design details of the selected alternative.

The proponent of the project, Dempsey Construction, submitted a MDP for the development of the Sherwin Bowl site on October 13, 1993. The name for the development selected by the proponent is the "Snowcreek Ski Area". The plan calls for development of year-round recreation facilities constructed in three phases. At build-out, the development would support 8,000 skiers with 12 lifts serving 1,500 acres of developed skiing terrain. Other proposed support facilities on National Forest Systems lands include three restaurant/lodge buildings, maintenance and administrative structures, and snowmaking equipment. Phase one of development will focus on the Sherwin Bowl area, including the construction of 6 lifts, the base lodge, Sherwin Station, maintenance and administration facilities, and the snowmaking system. Phase two will develop 3 lifts in Solitude Canyon, construct Solitude Lodge and Red Peak House, and add one lift to serve Sherwin Bowl. Phase three will add one lift near the base area and another lift near Judges Branch. Construction of the area would occur over a 10-year period, with approximately four years between construction phases. As required by the Record of Decision, the final design of phase two, in Solitude Canyon, will be based on the results of monitoring deer migration through the facilities associated with phase one. Snowmaking equipment will be installed to cover approximately 200 acres of ski runs. The area will employ approximately 88 full time staff, with an additional 380 seasonal staff. Summer operations will be limited to scenic rides and/or operation of the Red Peak House and Sherwin Station. The MDP also includes details for many aspects of the operation, including avalanche control, food service, snowmaking, ski patrol operations, and ski school.

The Forest Service will evaluate the consequences of implementing the MDP, and supplement the Sherwin Ski Area FEIS with this new information. To help the decision making process, the SEIS will evaluate the MDP as proposed, the MDP as modified in response to issues developed during scoping, and the no action alternative.

Public participation will be especially important at several points during the analysis. The first point is the scoping process (40 CFR 1501.7). The Forest Service has and is seeking information, comments, assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft SEIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

Mailings to individuals and agencies that participated in the previous planning efforts will provide them with information about the proposed MDP. Workshops and open houses, if held, will be announced locally. Federal, State, and local agencies, user groups, and other organizations who would be interested in the study will be invited to participate in scoping the issues that should be considered.

The draft SEIS is scheduled to be completed by September 1994. The comment period on this draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in the MDP participate at that time.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft SEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft SEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the draft SEIS, the comments will be analyzed and considered by the Forest Service in preparing the final supplemental environmental impact statement. The Final SEIS is expected to be completed by January 1995. The Forest Service is required to respond in the Final SEIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, and environmental consequences discussed in the Final SEIS and applicable laws, regulations, and policies in making his decision on the MDP. The decision will either be approval of the MDP as submitted, approval of the MDP as modified, or denial of the MDP (No Action). If the MDP is approved, a special use permit would be issued for the construction and operation of a winter sports site. The responsible official will document the decision and rationale in the Record of Decision. The decision will be subject to appeal under 36 CFR part 217 or regulations applicable at the time of the decision. Dennis Martin, Forest Supervisor, Inyo National Forest, 873 N. Main, Bishop, California 93514 is the responsible official for review of the MDP.

Dated: October 13, 1993.

Dan Totheroh,

Acting Forest Supervisor.

[FR Doc. 93-25767 Filed 10-19-93; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-808]

Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 20, 1993.

FOR FURTHER INFORMATION CONTACT: Bill Crow, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0116.

Final Determination

We determine that certain stainless steel wire rods are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our affirmative preliminary determination of this investigation on July 28, 1993 (58 FR 41729, August 5, 1993), the following events have occurred:

On August 12, 1993, Mukand and Sunstar (respondents) requested a hearing. On August 30, 1993, respondents withdrew their request for a hearing. On August 30, 1993, petitioners and respondents submitted case briefs. On September 7, 1993, petitioners submitted their rebuttal brief.

Scope of the Investigation

For purposes of this investigation, certain stainless steel wire rods (SSWR) are products which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States are round in cross-section shape, annealed and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation is July 1, 1992, through December 31, 1992.

Best Information Available

Mukand and Sunstar

As detailed in the preliminary determination, the Department of Commerce (the Department) determined that Mukand and Sunstar had impeded the investigation. Section 776(c) of the Act provides that whenever a party significantly impedes an investigation, the Department shall use the best information available (BIA). We have done so in this investigation.

As BIA for Mukand and Sunstar, we are assigning the highest margin contained in the petition, in accordance with the two-tiered BIA methodology under which the Department imposes the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding. The Department's two-tier methodology for assigning BIA based on the degree of respondents' cooperation has been upheld by the U.S. Court of Appeals for the Federal Circuit. (See *Allied-Signal Aerospace Co.* v. *the United States,* Appeal No. 93–1049 (Fed. Cir. June 22, 1993); see also *Krupp Stahl AG et al.* v. *the United States,* Slip Op. 93–84 (CIT May 26, 1993)). The highest margin contained in the petition is 48.80 percent.

Grand Foundry

As detailed in the preliminary determination, we determined that the use of BIA is appropriate for Grand Foundry Ltd. (Grand Foundry) because it failed to provide the information requested in the form required. In deciding whether to use BIA, section 776(c) provides that the Department may take into account whether the respondent was able to produce information requested in a timely manner and in the form required.

Consequently, we determined that it is appropriate to assign Grand Foundry the highest margin contained in the petition, 48.80 percent, in accordance with the two-tiered BIA methodology under which the Department imposes the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of the subject merchandise from India. Section 735(a)(3) of the Act provides that critical circumstances exist if:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

In determining knowledge of dumping, we normally consider margins of 15 percent or more sufficient to impute knowledge of dumping for exporter's sales price sales, and margins of 25 percent or more for purchase price sales. (See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy, 52 FR 24198 (June 29, 1987)). Since the final margins for SSWR from India are above 25 percent, we determine, in accordance with section 735(a)(3)(A)(ii) of the Act, that knowledge of dumping existed for SSWR from India.

Under 19 CFR 353.16(f), we normally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

As BIA for Mukand, Sunstar, and Grand Foundry, we are making the adverse assumption that imports were massive over a relatively short period of time in accordance with section 735(a)(3)(B) of the Act. Based on this analysis, we determine that critical circumstances exist for imports of SSWR from India for Mukand, Sunstar, and Grand Foundry. With respect to firms covered by the "All Other" rate, because the dumping margin is sufficient to impute knowledge of dumping, and because we have determined, as BIA, that imports of SSWR have been massive over a relatively short period of time for the companies we attempted to investigate, we determine that critical circumstances also exist for "all other" firms.

Interested Party Comments

Comment 1: Mukand and Sunstar (respondents) argue that they did not intentionally impede the investigation. Respondents maintain that the basis of the Department's action in this case is Mukand's initial characterization of Sunstar. Respondents state that they acknowledge that there were difficulties in the early stages of the investigation which resulted in the submission of erroneous information, and which caused the Department significant difficulty in its preliminary investigation. Respondents assert, however, that the Department now possesses accurate data and should proceed with its investigation. Respondents contend that they cooperated with the Department after Mukand's management became aware of the problems caused by an employee's misrepresentations.

Respondents further argue that the Department's use of the most adverse BIA rate under its two-tiered BIA methodology is inappropriate and unnecessarily punitive. Respondents state that the antidumping law is intended to be remedial, not punitive. Respondents maintain that actual data from Mukand's records is more accurate than the unsubstantiated allegations in the petition and that ample time remains to permit fair consideration and verification of Mukand's actual data. Moreover, respondents state that the Department's decision to use, as BIA, the highest margin contained in the petition ignores the numerous timely submissions made by Mukand and Mukand's remedial steps after the difficulties were identified.

Respondents assert that once it became evident to Mukand's management that the company's responses contained inconsistencies, its Executive Director undertook an investigation and traveled to Washington to attempt to explain the inconsistencies to the Department. Respondents argue that this is not a refusal to cooperate and, therefore, does not warrant punitive action. Respondents state that the Department should recognize that Mukand has attempted to submit information in a complete and accurate form. Respondents assert that the Department has the time and the resources to continue with this investigation and to calculate an accurate margin. Furthermore, respondents maintain that at the very least, in the event the Department determines that BIA is justified, the Department should apply the less adverse BIA rate applied to respondents who have cooperated in the proceeding.

Petitioners maintain that the Department properly used BIA for sales of SSWR from India in its preliminary determination of sales at less than fair value and that the Department properly decided not to conduct verification of Mukand and Sunstar. Petitioners maintain that this decision is consistent with the Department's practice and is

warranted by respondents' actions in this proceeding.

Petitioners assert that Mukand did impede the investigation. Petitioners argue that the individual who certified the accuracy of Mukand's submissions was given that responsibility by Mukand, and that Mukand cannot now disclaim this employee's action as an agent of Mukand. Petitioners also assert that Mukand did not promptly take action to correct its inconsistent statements. Petitioners state that Mukand did not meet with the Department until three weeks after petitioners informed the Department of contradictions in Mukand and Sunstar's responses.

Petitioners also argue that Mukand is not being punished by the Department's refusal to consider Mukand's data. Petitioners assert that the Department's use of its two-tiered methodology has been affirmed by the Court of Appeals for the Federal Circuit, as a means of inducing the submission of timely, accurate, and complete information by respondents. Petitioners maintain that the Department's application of that methodology in this proceeding is consistent with law and regulation, and was necessary because Mukand's information was unreliable and could not be used as the basis of a determination.

DOC Position: We disagree with respondents. In our preliminary determination, we found that Mukand and Sunstar impeded the investigation because there were significant inconsistencies in the respondents' certified responses (See, June 22, 1993, memorandum for Barbara R. Stafford, outlining these inconsistencies). These certified submissions formed a record of misleading and contradictory responses such that the Department was not able to proceed normally with its antidumping investigation. Respondents attempted to explain and rationalize the significant inconsistencies in their responses only after the Department informed respondents' counsel that the Department would not issue any further requests for information. However, these attempts do not transform Mukand and Sunstar into cooperative respondents. Respondents' latest assertion that the Department now possesses accurate data is ineffectual in light of the fact that earlier submissions which were also certified by respondents as accurate, contained erroneous information. Accordingly, for our final determination we have not changed our determination that Mukand and Sunstar impeded the investigation.

Based on Mukand's and Sunstar's history of misleading and contradictory submissions we determined that the reported information was highly unreliable. Thus, we determined not to solicit further information from either respondent. As a result, we did not consider petitioners' allegation of sales below the cost of production nor did we conduct verification. As the Department did not have a reliable source of information upon which to base its final determination, we are assigning, in accordance with section 776(c) of the Act, Mukand and Sunstar a BIA rate. In accordance with our two-tiered BIA methodology, we are using, as BIA, the highest margin contained in the petition because respondents significantly impeded this investigation.

Comment 2: Petitioners argue that the Department should expedite the final determination in this proceeding. Petitioners maintain that there is no apparent reason why the standard 75-day period between the preliminary and final determinations is needed in this case, given that the Department's determination will be based on the use of BIA and that no verification is being conducted in this investigation. Petitioners also assert that expediting the final determination is consistent with Department practice (as illustrated in Certain Welded Stainless Steel Butt-Weld Pipe Fittings From the Republic of Korea, 57 FR 48018 (December 29, 1992) and Sodium Thiosulfate From the People's Republic of China, 55 FR 51140 (December 12, 1990), and is appropriate, given that the Department has found that Mukand and Sunstar have seriously impeded the investigation.

DOC Position: We disagree with petitioners. Given that we found no compelling reason to expedite the final determination and, given the impracticability of reassigning staff, we did not expedite.

Comment 3: Petitioners state that the Department properly determined not to grant respondents' request for postponement of the final determination.

DOC Position: We agree with petitioners. As stated in our preliminary determination and the August 25, 1993, letter to respondents' counsel, the Department has determined that, because respondents have seriously impeded this proceeding, there is a compelling reason not to grant the request for a postponement of the final determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of certain stainless steel wire rods from India, that are entered, or withdrawn from warehouse, for consumption on or after May 7, 1993, which is the date 90 days prior to the publication of our preliminary determination. The Customs Service shall require a cash deposit or posting of a bond equal to the margins below on all entries of SSWR from India. This suspension of liquidation will remain in effect until further notice. The estimated dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Mukand Ltd.	48.80
Sunstar Metals Ltd.	48.80
Grand Foundry Ltd.	48.80
All Others	48.80

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 45 days.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: October 12, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-25710 Filed 10-19-93; 8:45 am]

BILLING CODE 3510-DS-P

International Trade Administration

[C-122-404]

Live Swine From Canada; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on live swine from Canada for the period April 1, 1990 through March 31, 1991. We preliminarily determine the net subsidy to be Can$0.0289 per kilogram for all live swine. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: October 20, 1993.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Stephanie Moore,

Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 21, 1991, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (56 FR 41506) of the countervailing duty order on live swine from Canada (50 FR 32880; August 15, 1985). On August 12, 1991, the Government of Canada requested an administrative review of the order. On August 27, 1991, Pryme Pork Ltd., a Canadian exporter of live swine, requested an individual administrative review, and the National Pork Producers Council requested an administrative review of the order. We initiated the review, covering the period April 1, 1990 through March 31, 1991, on September 18, 1991 (56 FR 47185). The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of all live swine, except breeding sows and boars, from Canada. Such merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 0103.91.00 and 0103.92.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. The review covers the period April 1, 1990 through March 31, 1991 and 43 programs.

Request for Exclusion of or Separate Rate for Weanling Pigs, or a Separate Company Rate

On August 27, 1991, Pryme Pork Ltd. (Pryme) requested that the Department exclude weanling pigs (swine weighing under 40 kg.) from the scope of the order, or calculate a separate countervailing duty rate for weanlings, or calculate a separate countervailing duty rate for Pryme. The Department examined Pryme's arguments and preliminarily determines as follows:

With regard to the request for the exclusion of weanlings from the order, Pryme has provided no new information which would warrant reconsideration of the scope determination reached in Live Swine from Canada; Final Results of Countervailing Duty Administrative Review (56 FR 28531; June 21, 1991) (Swine Fourth Review Final Results). In that review we determined, and the FTA Binational Panel reviewing that determination has affirmed, that weanlings are within the scope of the order. See Live Swine From Canada, USA–91–1904–03 (May 19, 1992) (Swine Fourth Review Panel).

We have also considered and now preliminarily deny Pryme's request that the Department calculate a separate rate of countervailing duty for weanlings. The Department's general practice, as prescribed by the Act, is to calculate one countervailing duty rate for the entire class or kind of merchandise subject to an order. See 19 U.S.C. 1677e(a). The separate rate calculated for slaughter sows and boars in the first administrative review of this order represents the only instance in which the Department has calculated a product-specific rate within a class or kind of merchandise. See Live Swine From Canada; Preliminary Results of Countervailing Duty Administrative Review (53 FR 22189; June 14, 1988) (Swine First Review Preliminary Results); Live Swine From Canada; Final Results of Countervailing Duty Administrative Review (54 FR 651; January 9, 1989) (Swine First Review Final Results).

The test used to establish the slaughter sows and boars exception consisted of two parts. First, we applied the criteria adopted in *Diversified Products Corp. v. U.S.*, 572 F. Supp. 883 (CIT 1983) (*Diversified Products*). These criteria are: (1) The general physical characteristics of the product; (2) the expectations of the ultimate purchaser; (3) the ultimate use of the product in question; and (4) the channels of trade in which the product moves. Second, we compared the amount of subsidies received on the product (slaughter sows and boars) with the amount received on the other products within the class or kind of merchandise.

Subsequently, we have determined that the *Diversified Products* criteria were designed to differentiate between classes or kinds of merchandise, not among products within a class or kind. We believe that it is only in the context of distinguishing between classes or kinds that the criteria can be effectively applied.

If a product is within a class or kind of merchandise covered by a countervailing duty order by means of the clear intent of the original investigation, as expressed by the relevant descriptions of the merchandise, we have determined that the intent of the statute is that the class or kind of merchandise not be divided into subclasses on the basis of perceived differences in products based upon the *Diversified Products* criteria. Since the Department has expressly made the determination that both sows and boars and weanlings are within the scope of the order based on the descriptions of the merchandise in the original petition, the countervailing duty order (50 FR 32880 (1985)), and the final affirmative determination of the International Trade Commission, we conclude that it was inappropriate for the Department to grant the slaughter sows and boars "subclass" exception on the basis of a *Diversified Products* criteria analysis.

Further, there is no statutory or regulatory authority requiring the Department to draw a distinction on the basis of product differences within a class or kind of merchandise covered by a countervailing duty order. In fact, the statute contains a presumption in favor of country-wide countervailing duty rates, and the statute and the regulations are silent on whether the class or kind of merchandise subject to a countervailing duty order may be separated into sub-categories. However, while the Department may further analyze the issue of granting separate product-specific rates in future cases, the Department has definitely determined that the *Diversified Products* criteria are only appropriate for distinguishing between classes or kinds of merchandise. They are not appropriate for distinguishing among products within a class or kind of merchandise.

For these reasons, we preliminarily deny Pryme's request to establish a subclass for weanlings and to calculate a separate subsidy rate for weanlings. For similar reasons, we preliminarily determine that it is no longer appropriate to grant slaughter sows and boars a separate rate based upon the previous determination that the product constituted a "subclass." See Decision Memorandum on Product-Specific Rates in Countervailing Duty Administrative Reviews, dated July 19, 1993.

Finally, we have considered Pryme's request for a company-specific rate. Pryme certified, pursuant to 19 CFR 355.22(a)(2)(i), that it had not received any subsidies on its production or sales of "subject merchandise (i.e. weanlings, or swine under 40 kg.)" during the review period. At verification, we found that, during the review period, Pryme sold only weanlings, but received benefits under the National Tripartite Stabilization Scheme for Hogs on market hogs sold in the previous year. Since the class or kind of merchandise subject to the order includes all live swine, except breeding sows and boars, we determine that Pryme's certification that it "did not receive any benefits" was incorrect. *See* Memorandum to the

File regarding request of Pryme Pork, Ltd. for Individual Review of Countervailing Duty Order, dated April 7, 1993. The Department therefore preliminarily determines the applicable rate for Pryme to be the country-wide rate applicable to all live swine, in accordance with 19 CFR 355.22(f)(5)(i).

Request for Scope Exclusion of Slaughter Sows and Boars

P. Quintaine & Son, Ltd. requested that the Department conduct a scope analysis for the purpose of excluding slaughter sows and boars from the scope of this countervailing duty order. As explained above, the Department has determined and the panels have affirmed that "sows and boars are clearly within the scope of the order. The order covers all live swine except breeding swine." See Swine First Review Preliminary Results (53 FR 22189; June 14, 1988); Swine First Review Final Results (54 FR 651; January 9, 1989). P. Quintaine & Son did not submit any new information that would lead the Department to reconsider its earlier determination. Therefore, the Department finds no reason to reexamine the scope determination made in the first administrative review.

Request for Exclusion by ManitobaPork, est.

ManitobaPork, est., the provincial hog marketing board, has requested that the Department exclude from the countervailing duty order weanling pigs weighing less than 40 kg. produced and grown in Manitoba and exported to the United States.

ManitobaPork cites as authority the exemption of the Maritime provinces from the Memorandum of Understanding (MOU) between the United States and Canada on softwood lumber products from Canada; the countervailing duty investigation on that same product; and subsequent U.S. Trade Representative actions involving the United States' reaction to Canada's unilateral termination of that MOU. See Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada (57 FR 22570; May 28, 1992) (*Lumber*). We are unable to grant ManitobaPork's request for several reasons.

First, the Department's regulations, at 19 CFR 355.14, provide for exclusions of producers or exporters only when the request for exclusion is submitted within 30 days of the publication date of the Department's initiation notice in the investigation. There are no provisions for exclusions after a countervailing duty order has been issued. In addition, ManitobaPork is neither a producer nor an exporter within the meaning of 355.2(o). There are no provisions for exclusions of other parties. For these reasons, the Department cannot consider ManitobaPork's request for exclusion.

Also, ManitobaPork's reliance on *Lumber* is misplaced. The Department excluded the Maritime Provinces from the *Lumber* investigation and the resulting countervailing duty order based upon the fact that those provinces were expressly exempted from the MOU by agreement between the governments of the United States and Canada. Therefore, as the Department found, the "special circumstances" necessary for self-initiation of a countervailing duty investigation under the General Agreement on Tariffs and Trade (GATT) did not exist for the Maritime Provinces, "and the Department was precluded from self-initiating against these provinces." (*Lumber*, 57 FR at 22622). The binational panel reviewing the Department's final determination in *Lumber* has upheld this finding. In the Matter of Certain Softwood Lumber Products From Canada, USA–92–1904–02 (May 6, 1992), at 136.

Request for Rescission of Initiation of Administrative Review With Respect to Quebec Programs

The Government of Quebec (GOQ) requested that the Department rescind its initiation of review of the Quebec Regional Development Assistance Program and Quebec's Farm Income Stabilization Insurance Program (FISI). The GOQ contends that rescission would be consistent with established Department practice as well as with the terms of the U.S.-Canada Free Trade Agreement.

The GOQ cites the Department's determination in a prior administrative review of this order that the Regional Development Assistance Program did not provide countervailable benefits to live swine exported to the United States. The Department agrees; the Department found that this program was not countervailable in the Fourth Review. See Swine Fourth Review Final Results, 56 FR 28531 (1991). For this reason, absent new facts or evidence of changed circumstances, the Department will not examine this program further.

As support for its request for rescission of the initiation of review of the FISI program, the GOQ cites Fresh, Chilled, and Frozen Pork from Canada, USA–89–1904–06 (March 8, 1991) at 19, in which, it claims, the Department determined FISI to be non-countervailable. The GOQ further contends that its request for rescission is supported by the panel's statement that "[i]f Commerce nevertheless examines FISI in an ongoing or future administrative review, Quebec may have an argument available to it relating to deviation from administrative practice." In the Matter of Fresh, Chilled and Frozen Pork from Canada (*Pork*), USA–89–1904–06 (June 3, 1991).

The GOQ's reliance on *Pork* is misplaced. First, Binational Panel Decisions do not bind subsequent proceedings. Therefore, the panel's instructions and findings in the *Pork* proceeding are not binding beyond that proceeding. Second, the Department did not find FISI non-countervailable in *Pork*. Rather, the Department removed FISI from the subsidy calculations in response to the panel's determination that there was insufficient evidence in that record to support the Department's determination that FISI was countervailable. More importantly, the administrative record in this review contains substantial evidence not present in *Pork*, demonstrating that FISI is provided de facto to a specific industry or group thereof. This analysis is presented below.

Analysis of Programs

I. Federal Program

Feed Freight Assistance Program

The Feed Freight Assistance Program (FFA) is administered by the Livestock Feed Board of Canada (the Board) under the Livestock Feed Assistance Act of 1966 (LFA). The Board acts to ensure: (1) The availability of feed grain to meet the needs of livestock feeders; (2) the availability of adequate storage space in Eastern Canada to meet the needs of livestock feeders; (3) reasonable stability in the price of feed grain in Eastern Canada to meet the needs of livestock feeders; and (4) equalization of feed grain prices to livestock feeders in Eastern Canada, British Columbia, the Yukon Territory and the Northwest Territories. Although this program is clearly designed to benefit livestock feeders, FFA payments are also made to grain mills that transform the feed grain into livestock feed whenever these mills are the first purchasers of this grain. The Board makes payments related to the cost of feed grain storage in Eastern Canada, and payments related to the cost of feed grain transportation to, or for the benefit of, livestock feeders in Eastern Canada, British Columbia, the Yukon Territory and the Northwest Territories, in accordance with the regulations of the LFA.

In Live Swine from Canada; Final Results of Countervailing Duty Administrative Review (56 FR 10410;

March 12, 1991) (Swine Second and Third Reviews Final Results), the Department found this program *de jure* specific and thus countervailable because, based on the written language of the LFA, benefits are only available to a specific group of enterprises or industries (livestock feeders and feed mills). The GOC provided no new information during this review to cause the Department to reconsider this finding. The questionnaire response indicates that the Board calculated that 3.25 percent of the total transportation expenditures for feed grain users receiving assistance under this program in FY 1990/91 benefitted live swine producers in the designated areas of Canada. Therefore, we divided the amount of feed transportation expenditures attributable to live swine producers by the total weight of live swine produced in the FFA-eligible areas of Canada during the review period. We then weight-averaged the benefit by these areas' share of total Canadian exports of live swine to the United States. On this basis, we preliminarily determine the benefits from this program during the review period to be Can$0.0007 per kilogram for all live swine.

II. Federal/Provincial Program

National Tripartite Stabilization Scheme for Hogs

The National Tripartite Stabilization Program (Tripartite) was created in 1985 by an amendment to the Agricultural Stabilization Act (ASA). This amendment, codified at section 10.1, provides for the introduction of cost-sharing tripartite or bipartite stabilization schemes involving the producer, the federal government and the provinces. Pursuant to this amendment, federal and provincial ministers have signed Tripartite agreements covering: (1) Apples; (2) beans (including kidney/cranberry, white pea, and other colored beans); (3) beef (including cow-calf, feeder cattle, and slaughter cattle); (4) hogs; (5) sugar beets; (6) lambs; (7) onions; and (8) honey. No new agreements have been signed in the last four years.

The following provinces are signatories to the National Tripartite Stabilization Scheme for Hogs: Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Prince Edward Island, Quebec, and Saskatchewan. As of the date of the questionnaire response, January 21, 1992, Newfoundland was in the process of negotiating an agreement.

The general terms of the Tripartite Scheme for Hogs are as follows: All participating hog producers receive the same level of support per market-hog unit; the cost of the scheme is shared equally between the federal government, the provincial government, and the producers, with each government contribution capped at three percent of aggregate market value; producer participation in the scheme is voluntary; the provinces may not offer separate stabilization plans or other *ad hoc* assistance for hogs (with the exception of Quebec's FISI program); the federal government may not offer compensation to swine producers in a province not party to an agreement; and the scheme must operate at a level that limits losses but does not stimulate over-production.

The Tripartite Scheme for Hogs provides for a five-year phase-in period to adjust for differences between the scheme and any provincial programs still in effect. All existing provincial stabilization programs except FISI were completely phased out by March 31, 1991. During the review period, two provincial stabilization programs remained in effect in provinces that exported live swine to the United States (see Section III).

Stabilization payments are made when the market price falls below the calculated support price. The difference between the support price and the average market price is the amount of the stabilization payment. Hogs eligible for stabilization payments under the Tripartite Scheme must index above 80. Weanlings are not indexed. However, section 2.7 of the Tripartite Scheme for Hogs allows for provinces to divide payments between weanling producers and finishers (farmers who buy weanlings and raise them to market weight). Two provinces, Ontario and Quebec, utilize this provision, known as the "weaner split."

The GOC has claimed that Tripartite is integrally linked to the ASA, the Western Grain Stabilization Act (Western Grain Act), and Canada's supply management programs, within the meaning of the Department's Proposed Regulations at § 355.43(b)(6). See Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366, 23380 (section 355.43(b)(6)) (1989) (Proposed Rules). The Department conducted its analysis of this claim based on the information which the GOC provided in its submission of March 16, 1992.

For purposes of determining the specificity of a program pursuant to section 771(5) of the Act, the Department currently considers a claim of integral linkage by examining, among other factors, the following: (1) Administration of the programs; (2) evidence of a government policy to treat industries equally; (3) the purposes of the programs as stated in their enabling legislation; and (4) the manner of funding of the programs.

In determining whether there is a government policy to treat industries equally, we look first for a documentary statement demonstrating the existence of "an overall government policy or national development plan," which would clearly indicate a government policy to treat industries equally. See Carbon Steel Wire Rod From Saudi Arabia; Final Results of Countervailing Duty Administrative Review, 57 FR 8303, 8304 (1992). As detailed more thoroughly in an analysis memorandum, we determined that the GOC did not provide any evidence to this effect regarding any of the three programs that the GOC alleged were integrally linked with Tripartite. Further, in examining Tripartite and the named and designated provisions of the ASA, we find that there are unexplained differences in the provision of benefits which can result in unequal treatment of different commodities. Regarding the Tripartite and Western Grain programs, they are neither funded by the same entities nor available everywhere in Canada. In addition, Tripartite payments are triggered differently than Western Grain payments. With its integral linkage claim, the GOC provided no information with regard to the Supply Management program which would show a government policy to treat industries covered under this program in the same manner as those covered by Tripartite. Indeed, record evidence demonstrates that the Supply Management program operates on a completely different basis than Tripartite.

Based upon our application of the proposed integral linkage criteria to the information submitted by the GOC in support of its claim, we find that the evidence does not support a determination that any of these three programs were designed to function as complementary programs in conjunction with Tripartite. Therefore, the Department preliminarily determines that the programs are not integrally linked. See Decision Memorandum on Integral Linkage, October 12, 1993.

Having preliminarily determined that Tripartite is not integrally linked with any other program, our analysis focuses on determining whether Tripartite, viewed separately, provides a domestic subsidy in law or in fact to a specific industry or enterprise, or group thereof. To reach a determination, the Department must interpret the phrases

"domestic subsidy" and "specific enterprise or industry, or group of enterprises or industries." See 19 U.S.C. 1677(5)(A)(ii) and (B). The Act does not attempt to define these key phrases precisely. Instead, Congress delegated "wide latitude" to the Department to establish the parameters of these phrases and to determine whether a countervailable subsidy is being provided in the context of a particular case. See *United States* v. *Zenith Radio Corp.*, 562 F.2d 1209, 1216 (CCPA 1977), *aff'd*, 437 U.S. 443 (1977).

To implement this statutory directive, the Department set forth in its Proposed Regulations four factors at section 355.43(b)(2) that it will consider, among other things, in determining whether a domestic program is specific. See Proposed Rules at 23379–80. As the Department stated at the time they were published, the Proposed Regulations codified the Department's existing practice for determining the existence of countervailable subsidies.

As the Department explained in the *Lumber* determination and elsewhere, in codifying its practice in the Proposed Regulations, the Department relied in part upon the Final Results of Countervailing Duty Administrative Review; Carbon Black From Mexico, 51 FR 30385 (1986) *(Carbon Black).* In *Carbon Black,* the Department determined, and based its affirmative finding solely upon the fact that, there were too few users of the domestic benefit program at issue to justify a finding of nonspecificity. *Id.;* see also *Cabot Corp.* v. *United States,* 620 F. Supp. 722 (1985), *appeal dis.,* 788 F.2d 1539 (Fed. Cir. 1986), *vacated as moot,* Order dated Nov. 20, 1986 (predating the 1988 amendment to the Act and implicitly accepting specificity determinations based solely upon a single factor).

The legislative history underlying the 1988 amendment to section 771(5)(b) of the Act makes clear that Congress understood what the Court had instructed the Department to find in *Carbon Black,* and that Congress regarded that determination to be a reasonable approach to specificity. S. Rep. No. 71, 100th Cong., 1st Sess. 122–23 (1987). We note that a recent binational panel in Pure and Alloy Magnesium from Canada, USA–92–1904–03 (August 16, 1993), at 35, stated that "Commerce need not continue to consider other factors once it determines that under one factor the subsidy is specific."

In accordance with section 771(5) of the Act, the Department conducts a dual analysis in order to evaluate specificity. First, we seek to determine whether a program is *de jure* specific. In this regard, the Department has consistently interpreted subsection 355.43(b)(2)(i) of the Proposed Regulations, the first enumerated factor, as providing for the *de jure* analysis. See, *e.g.,* Fresh, Chilled, and Frozen Pork from Canada, 54 FR 30744, 30777 (1989). Thus, if after considering this first factor we reach an affirmative finding that the program at issue is limited on the face of the law to a specific enterprise, industry, or group thereof, we consider this sufficient to warrant a determination of specificity. In prior reviews, we have determined that the Tripartite program is *de jure* not specific based upon the fact that on the face of the law, the benefits are available to all industries which comprise the agricultural sector in Canada. See, *e.g.,* Swine Fourth Review Final Results, 56 FR 28531 (1991). Petitioners have presented no reason for us to reexamine this determination during the present review.

Therefore, we turn to whether the benefits under the Tripartite agreement are *de facto* specific. As with our analysis of *de jure* specificity under the first proposed factor, we have consistently interpreted the statute as permitting a finding of *de facto* specificity based entirely upon any one of the other enumerated factors, or upon a different, unenumerated factor.

In the 1989–1990 (fifth) review of the order on live swine from Canada, the binational panel upheld the Department's determination in its final results that hog producers were dominant beneficiaries of Tripartite during that period of review as supported by substantial evidence. In the Matter of Live Swine From Canada, USA–91–1904–04 (August 26, 1992) at 28. In its subsequent redetermination pursuant to remand, the Department explained that under its interpretation of section 771(5) of the Act, the fact that hog producers were dominant users of Tripartite, standing alone, justified determining that the program provided a *de facto* specific subsidy. Final Results of Redetermination Pursuant to Panel Remand, USA–91–1904–04 (October 30, 1992) at 12. In our remand, we also determined that because only 11 out of over 100 agricultural commodities received benefits under Tripartite, the program was *de facto* specific on that basis as well. Although, due to lack of record evidence, the panel could not accept our finding that the universe of agriculture was comprised of 100 commodities, the panel affirmed the Department's redetermination pursuant to remand, agreeing that, as a factual matter, "the number of users of Tripartite was small relative to the universe of eligible users." In the Matter of Live Swine From Canada, USA–91–1904–04 (June 11, 1993) at 11.

Although our practice is not to reexamine a specificity determination (affirmative or negative) made in the investigation or in a review absent new facts or evidence of changed circumstances, the record in the prior reviews did not contain all of the information we consider necessary to define the agricultural universe in Canada. Therefore, we collected documentation on the agricultural universe as well as additional information. The analysis which follows is based on the Department's full consideration of that information.

The same number of agricultural commodities (which the GOC now disaggregates into 13, rather than 11 items) received benefits under Tripartite during this review period as in previous review periods. In our questionnaire, the Department asked the GOC to define the universe of agricultural commodities produced in Canada; the GOC responded that "[i]t is not possible to provide a definitive total number of commodities, and a definitive value, for every * * * commodity * * * grown in Canada during the review period." We have examined the record of this proceeding, including information from Statistics Canada, in an effort to approximate the extent of the Canadian agricultural universe. Our analysis shows that over 80 agricultural commodities are produced in Canada, and are eligible to enter into Tripartite agreements. *See* Agricultural Universe Memorandum to the File, dated October 12, 1993. On the basis of this evidence, we therefore preliminarily determine that the number of users of the Tripartite program is too few, in relation to the large number of potential users, and that benefits are provided under Tripartite to a specific enterprise or industry or group thereof.

In this case, a finding that Tripartite has too few users compared to the universe of eligible users supports a preliminary determination that the program is *de facto* specific and thus countervailable. Moreover, evidence on the record regarding other relevant factors supports, rather than detracts from, a finding of specificity on the basis of too few users.

With respect to disproportionate and dominant use, the Department considers the history of payments under a particular income stabilization program to be probative of disproportionate or dominant use. See Pork, USA–89–1904–06 (March 8, 1991). In the case of Tripartite, benefits are received as

insurance payments against income losses incurred by hog producers as a result of fluctuations in the market price of the commodity. The amount of the payment is strictly determined by the difference between the market price and the support price for hogs, which is calculated on the basis of the Tripartite cost of production model.

Under these circumstances, the distribution of benefit payments among Tripartite participants during any single review period is more indicative of the price level maintained by the various commodities on the market during that period than of the tendency of a program to benefit some commodities more than others. For this reason, based on the assumption that over time market fluctuations may even out among covered commodities, the Department takes into account the history of payments under the Tripartite program. Hog producers have received 70 percent of all benefits paid out since the inception of Tripartite. This fact indicates not only that they have received significantly more benefits than any other producers, but also that they have received more benefits than all other producers combined. In addition, we note that 40 percent of Tripartite participants are producers of live swine. They are clearly dominant users of the program. These facts support the finding that Tripartite is *de facto* specific.

Regarding discretion, the Department historically has not placed great emphasis on this factor for determining *de facto* specificity. In determining whether a government has retained discretion in its administration of a subsidy program, the Department first examines the enabling legislation of a program. If it appears the government may have retained discretion, the Department examines the manner in which the program has been administered. If it appears that the government may have retained the ability to arbitrarily deny benefits, we review the procedures for approving or rejecting applications for benefits. In so doing, we seek to determine whether certain applications either have been or may be rejected or discouraged, and if so, on what basis and why. Certain Fresh Cut Flowers From the Netherlands, 52 FR 3301, 3304 (1987).

The ASA states that the Minister of Agriculture "may" enter into a Tripartite agreement when a plan meets two guidelines: one concerned with not giving enrolled producers a financial advantage over other producers in Canada, the other concerned with not providing an incentive for enrolled producers to overproduce. There are no definitions of "financial advantage" and no criteria for determining under what circumstances an agreement might stimulate overproduction. Moreover, even when the Minister of Agriculture determines, at her or his discretion, that these stipulations are met in a proposed agreement, based on the language of the legislation, the Minister of Agriculture may still choose not to enter into an agreement.

The legislative history of the Tripartite program indicates that legislators were aware of the great amount of discretion afforded to the Minister of Agriculture under this arrangement. Therefore, we specifically asked the GOC about the negotiating process which leads to a Tripartite agreement. Producer groups must approach the Minister of Agriculture requesting a Tripartite agreement. Participation in Tripartite is not automatic. The GOC has not demonstrated that there are explicit or standard criteria for evaluating Tripartite agreement requests. The GOC did not reach agreement with at least four producer groups which expressed an initial interest in the program. Even once an Agreement is in place, as a Tripartite Agreement for Hogs has been since 1986, it may still take months or years of negotiations before a party may sign the agreement. For instance, at the time of the GOC questionnaire response (January 1992), Newfoundland had been negotiating to sign the Hog agreement since February 1991.

Given the above evidence, we find that the government of Canada may exercise discretion in the administration of Tripartite. While these findings by themselves are not dispositive of the *de facto* specificity of the Tripartite program, they do not detract from the finding of specificity based either upon the small number of Tripartite users or upon the fact that hog producers are dominant users of the program.

Finally, our review of the record indicates that respondents have not provided or indicated any other evidence which might detract from a finding of specificity. Therefore, during this review period, based on the above analysis, we preliminarily determine that the National Tripartite Stabilization Scheme for Hogs provides benefits which are *de facto* specific.

During the review period, payouts for hogs were made under the Tripartite Scheme for Hogs in each of the nine signatory provinces, Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, P.E.I., Quebec, and Saskatchewan. Alberta, Manitoba, Ontario, Quebec, and Saskatchewan exported live swine to the United States during the review period. To calculate the benefit, we first divided two-thirds (representing the federal and provincial portions) of the payments made in during the review period to producers in each province by the total weight of live swine produced in that province during the review period, and calculated a benefit per kilogram on a province-by-province basis. We then weight-averaged each exporting province's per-kilo benefit by that province's share of total Canadian exports of live swine to the United States to calculate the average benefit per kilogram. On this basis, we preliminarily determine the benefit during the review period to be Can$0.0191 per kilogram.

III. Provincial Price/Income Stabilization Programs

1. Quebec Farm Income Stabilization Insurance Program (FISI)

The FISI program was established in 1976 under the "Loi sur l'assurance-stabilisation des revenus agricoles." The program is administered by the Régie des Assurances Agricoles du Québec (Régie). The purpose of the program is to guarantee a positive net annual income to participants whose income is lower than the stabilized net annual income. Since Quebec joined the federal government's Tripartite Price Stabilization Scheme for Hogs in February 1989, the FISI scheme for hogs has operated by covering only the difference between payments made under the Tripartite Scheme for Hogs and what FISI payments would have been in the absence of the Tripartite scheme. FISI is the only provincial stabilization scheme that continues to operate in conjunction with the Tripartite Scheme for Hogs. The FISI scheme for piglets insures sows as well, by applying a technical coefficient to estimate piglet production.

Two-thirds of the funding for the FISI program is provided by the provincial government and one-third by producer assessments. Participation in FISI is voluntary. However, once enrolled in the program, a producer must make a five-year commitment. Each farmer may insure a maximum of 5,000 feeder hogs and 400 sows. Whenever the balance in the FISI account is insufficient to make payments to participants, the provincial government lends the needed funds to the program at market rates. The principal and interest on these loans are repaid by the Régie using the producer and provincial contributions.

Although our practice is not to reexamine a specificity determination (affirmative or negative) made in the

investigation or in a review absent new fact or evidence of changed circumstances, the record in the prior reviews did not contain all of the information we consider necessary to define the agricultural universe in Québec. Therefore, we collected documentation on the agricultural universe as well as additional information. The analysis which follows is based on the Department's full consideration of that information.

In Swine First Review Final Results (54 FR 22651; January 9, 1989), the Department found FISI to be *de jure* not specific. Therefore the Department must examine whether FISI benefits are provided *de facto* to a specific group of enterprises or industries. As outlined above in our discussion of Tripartite (see Section II), a program can be found specific, as the CIT stated in *Carbon Black*, on the grounds that it has "too few users" to be considered non-specific. FISI benefits are provided through 11 insurance schemes covering the following fifteen products: (1) Feeder calves; (2) feeder cattle and slaughter cattle; (3) grain-fed calves; (4) milk-fed calves; (5) piglets; (6) feeder hogs; (7) lambs; (8) potatoes; (9) grain corn; (10) silage wheat; (11) barley; (12) oats and mixed grains; (13) sugar beets; (14) wheat for human consumption; and (15) soybeans. Although the number of commodities covered under FISI appears to have increased from 11 to 15 from 1988 to 1991, in fact this difference results primarily from a different method of counting the same commodities. Soybeans are the only new commodity to be enrolled in FISI since 1981. Otherwise, the same commodities have benefitted from FISI over the majority of the program's life. We have determined that there are over 80 agricultural commodities produced in Québec and potentially eligible for FISI. *See* Agricultural Universe Memorandum to the File dated October 12, 1993. We therefore preliminarily determine that the number of FISI users is too few, in relation to the large number of potential users, and that benefits are provided under FISI *de facto* to a specific enterprise or industry or group thereof.

In addition, we are aware of no evidence in the record which would detract from a finding of specificity on this basis. For instance, an examination of coverage across all insured commodities reveals that producers of live swine are dominant users of the FISI program. Hogs and piglets account for 51 percent of the total value of the 15 commodities insured under the FISI program. Not only are they insured to a greater extent than any other commodity, the insured value of live swine exceeds that of all other FISI-insured commodities combined. These facts alone also support a finding that FISI is *de facto* specific.

In addition, we note that the Act Respecting Farm Income Stabilization Insurance (FISI Act) appears to allow the GOQ considerable discretion in determining which products receive schemes. Schemes are established for any product or group of products which the GOQ "indicates." Neither the FISI Act nor any other record evidence provides any indication of what criteria the government considers in making this determination. The GOQ may also stipulate which region or regions of Quebec will be covered by a scheme. Also, the hog scheme is the only one for which a maximum level of insurance has not been set by the GOQ. Finally, according to the FISI Act, the method of computing net annual income and stabilized net annual income, in addition to eligibility and participation requirements, may be determined separately for each scheme. In fact, the stabilized net annual income, which is the level below which income must drop before FISI benefits will be paid, does vary across schemes. Based on the statutory provisions, we find that the government may exercise discretion in granting and designing FISI schemes. As with Tripartite, while these findings by themselves are not dispositive of the *de facto* specificity of the FISI program, they do not detract from a finding of specificity based upon either the small number of FISI users or the fact that hog producers were dominant users of the program.

Therefore, since benefits under this program are provided, *de facto*, to a specific group of enterprises or industries, we determine that FISI benefits are countervailable.

To calculate the benefit, we multiplied the total payments made under both the piglet and feeder hog schemes during the review period by two-thirds (representing the provincial portion). We divided this amount by the total weight of live swine produced in Quebec to get the average benefit per kilogram. We then weight-averaged the benefit by Quebec's share of total Canadian exports of live swine to the United States. On this basis, we preliminarily determine the benefit to be Can$0.0042 per kilogram during the review period.

2. Saskatchewan Hog Assured Returns Program (SHARP)

SHARP was established in 1976 pursuant to the Saskatchewan Agricultural Returns Stabilization Act, to establish stabilization plans for any agricultural commodity. SHARP provided stabilization payments to hog producers in Saskatchewan at times when market prices fell below a designated "floor price." The program was administered by the Saskatchewan Pork Producers' Marketing Board (the Board) on behalf of the provincial Department of Agriculture. In accordance with the Tripartite Scheme for Hogs, SHARP was terminated on March 31, 1991. At the time of its termination, only hogs and cattle had stabilization plans.

The program was funded by levies on the sale of hogs covered by the program. Levies from participating producers ranged from 1.5 to 4.5 percent of market returns on the sale of hogs and were matched by the province. After the Tripartite Scheme for Hogs was implemented on July 1, 1986, SHARP payments were reduced by the amount of Tripartite Scheme for Hogs payments. The floor price for this program was calculated quarterly, and stabilization payments were made when the market price fell below the floor price. Payments were made to hog producers in each quarter of the review period.

Whenever the balance in the SHARP account was insufficient to make payments to participants, the provincial government lent the needed funds to the program at terms consistent with commercial considerations. The principal and interest on these loans were to be repaid by the Board using the producer and provincial contributions.

In Swine First Review Final Results (54 FR 651; January 9, 1989), the Department found the SHARP hog plan to be *de jure* specific and thus countervailable because the legislation expressly makes the program available only to a single industry (hog producers). The GOC has provided no new information to warrant reconsideration of this finding.

To calculate the benefit, we added the provincial government's annual contribution to the amount the provincial government loaned to the hog plan account to cover the total amount paid out during the review period. We divided this amount by the total weight of live swine produced in Saskatchewan. We then weight-averaged the benefit by Saskatchewan's share of total Canadian exports of live swine to the United States. On this basis, we preliminarily determine the benefit to be Can$0.0007 per kilogram for all live swine during the review period.

As of the program's termination date, the provincial SHARP fund had a sizeable deficit. Since no arrangements

have been made for the disposition of this deficit, there may be residual benefits to swine producers in future review periods. Although termination of a program would normally require a change in the cash deposit rate, given these circumstances, we have not adjusted the cash deposit rate for this program.

IV. Other Provincial Programs

1. Alberta Crow Benefit Offset Program (ACBOP)

This program, administered by the Alberta Department of Agriculture, is designed to compensate for market distortions in feed grain prices created by the federal government's policy on grain transportation. Assistance is provided on feed grain produced in Alberta, feed grain produced outside Alberta but sold in Alberta, and feed grain produced in Alberta to be fed to livestock on the same farm. The government provides "A" certificates to registered feed grain users and "B" certificates to registered feed grain merchants, which can be used as partial payments for grains purchased from grain producers. Feed grain producers who feed their grain to their own livestock submit a Farm Fed Claim directly to the government for payment.

Hog producers receive benefits in one of three ways. Hog producers who do not grow any of their own feed grain receive "A" Certificates which are used to cover part of the cost of purchasing grain. Second, hog producers who grow all of their own grain submit a Farm Fed Claim to the government of Alberta for direct payment. Finally, hog producers who grow part of their own grain but also purchase grain receive both "A" certificates and direct payments.

In Swine Second and Third Review Final Results (56 FR 10410; March 12, 1991), the Department found this program to be *de jure* specific and thus countervailable because the legislation expressly makes it available only to a specific group of enterprises or industries (producers and users of feed grain). The GOC has provided no new information to warrant reconsideration of this finding.

To determine the benefit to swine producers from this program, we used the methodology which we used in calculating ACBOP benefits in our redetermination on remand during the Binational Panel proceedings in the 1989–1990 (fifth) review period. The Panel affirmed this methodology. In the Matter of Live Swine From Canada, USA–91–1904–04 (June 11, 1993) at 33–36. We first calculated a hog grain consumption-to-weight-gain ratio, using information from *Diets for Swine*, a University of Guelph, Ontario, publication submitted in the supplemental questionnaire response. The Department believes this document provides the most accurate description of the swine diet, which consists of grain (usually barley in Alberta) and protein/vitamin supplements. This document allows us to estimate the total consumption of feed grain per hog.

Using the Alberta Supply and Disposition Tables, we estimated the quantity of grain consumed by livestock in Alberta during the review period. We multiplied the number of swine produced in Alberta by the average total grain consumption per hog as estimated above, and divided the result by total grain used to feed livestock. We thus calculated the percentage of total livestock consumption of grain in Alberta attributable to live swine to be 12.92 percent. We then multiplied this percentage by the total value of certificates and payments received during the review period to calculate the amount of benefit attributable to swine producers from this program. We weight-averaged the benefit by Alberta's share of total Canadian exports of live swine to the United States. On this basis, we preliminarily determine the benefit during the review period to be Can$0.0030 per kilogram.

2. Alberta Livestock and Beeyard Compensation Program (Livestock Predator Compensation Sub-Program)

This program compensates Alberta livestock producers for loss of food-producing livestock, including cattle, sheep, hogs, goats, rabbits and poultry, to predators. The Alberta Department of Agriculture administers this program, and provides assistance in the form of grants. As of June 1, 1990, a farmer may be compensated for up to 100 percent of the value of the killed livestock. Compensation for missing animals (previously 30 percent of commercial value) has been discontinued.

In Live Swine from Canada; Final Results of Countervailing Duty Administrative Review (56 FR 50560; October 7, 1991) (Swine Fifth Review Final Results), the Department found this program to be *de jure* specific and thus countervailable because the legislation expressly makes it available only to a specific group of enterprises or industries (livestock farmers). The GOC has provided no new information to warrant reconsideration of this finding.

To calculate the benefit, we divided the total payment to hog producers under this program by the total weight of live swine produced in Alberta during the review period. We then weight-averaged the result by Alberta's share of Canadian exports of live swine to the United States during the review period. On this basis, we preliminarily determine the benefits from this program during the review period to be significantly less than Can$0.0001 per kilogram.

3. Ontario Farm Tax Rebate Program

This program replaced the Ontario Farm Tax Reduction Program. Eligible farmers receive a rebate of up to 75 percent of property taxes levied on farm properties for municipal and school purposes, levied for local improvements under the Local Improvement Act, levied under the Provincial Land Tax Act or the Local Roads Boards Act, and imposed under the Local Services Boards Act, with rebate reductions for off-farm income above set levels. Farm property includes farm lands and outbuildings, whether owned or rented. Eligible properties include farms that produce food, fish, breeding horses and donkeys, pregnant mare's urine, fur-bearing animals, tobacco, flowers, nursery stock (sod or ornamental).

Any resident of Ontario may receive a rebate if he or she owns or rents and pays taxes on eligible properties. Beginning on April 1, 1991, the minimum gross production value was set at Can$7,000 for all of Ontario. Before April 1, 1991, and therefore during the review period, residents of Southern and Western Ontario must have produced farm products with a gross value of at least Can$8,000 and residents of Northern and Eastern Ontario must have produced products with a gross value of at least Can$5,000.

In Swine First Review Preliminary Results (53 FR 22189; June 14, 1988), the Department found this program to be *de jure* specific, and thus countervailable, because the benefits provided varied depending on the region of Ontario in which the farm was located. This finding was unchanged in the final results of that review. The GOC has provided no new information to warrant reconsideration of this finding for this review period.

To calculate the benefit, we divided total rebates to swine producers in Eastern and Northern Ontario with sales within the Can$5,000 to Can$8,000 range by the total weight of live swine produced in Ontario during the review period. We then weight-averaged the result by Ontario's share of Canadian exports of live swine to the United States during the review period. On this basis, we preliminarily determine the benefits from this program during the review period to be significantly less than Can$0.0001 per kilogram.

4. Livestock Improvement Program for Northern Ontario

To improve the quality of livestock in Northern Ontario, this program reimburses farmers for up to 20 percent of the purchase cost of breeding stock, including dairy cows, heifers, beef bulls, rams, ewes, boars, and gilts. The maximum grant payable to an applicant is Can.$1,700. This program was terminated on April 1, 1991.

In Swine First Review Preliminary Results (53 FR 22189; June 14, 1988), the Department found this program to be *de jure* specific and thus countervailable, because only livestock farmers in Northern Ontario are eligible. This finding was unchanged in the final results of that review. The GOC has provided no new information to warrant reconsideration of this finding.

To calculate the benefit, we divided the total payment to hog producers under this program by the total weight of live swine produced in Ontario during the review period. We then weight-averaged the result by Ontario's share of Canadian exports of live swine to the United States during the review period. On this basis, we preliminarily determine the benefit to be significantly less than Can$0.0001 per kilogram.

5. Ontario Pork Industry Improvement Plan (OPIIP)

This five-year plan commenced on April 1, 1986, and was terminated on March 31, 1991. The plan provided grants to Ontario swine producers to enable them to improve their productivity, profitability, and competitive position by increasing their efficiency. To be eligible for the plan, producers must be residents of Ontario, own or lease facilities in Ontario for swine production and have at least 20 sow equivalents. One sow equivalent is equal to one sow or 15 market-weight hogs marketed annually. Ten types of grants are available to swine producers under this plan. During the review period, Ontario swine producers received grants under the following programs: swine production analysis, enterprise analysis, swine ventilation, productivity and quality improvement, artificial insemination, rodent control, private veterinary herd health program, education, and restocking.

In Live Swine from Canada; Preliminary Results of Countervailing Duty Administrative Review (55 FR 20812; May 21, 1990) (Swine Second and Third Review Preliminary Results), the Department found this program to be *de jure* specific and thus countervailable, because the program's legislation expressly makes it available only to swine producers. This finding was unchanged in the final results of that review. The GOC has provided no new information to warrant reconsideration of this finding.

To calculate the benefit, we divided the total value of all grants provided to swine producers during the review period by the total weight of live swine produced in Ontario during this period. We then weight-averaged the result by Ontario's share of total Canadian exports of live swine to the United States during the review period. On this basis, we preliminarily determine the benefits from this program to be Can$0.0004 per kilogram during the review period.

6. Ontario Rabies Indemnification Program

This program, administered by the Farm Assistance Branch of the Ontario Ministry of Agriculture and Food, compensates livestock producers, including producers of cattle, horses, sheep, swine, and goats, for damage caused by rabies. Producers apply for compensation through a federal inspector, who determines that the animal is suffering from rabies and orders the animal to be destroyed. A maximum of Can$100 may be paid by the province of Ontario per hog under this program, with the Ontario Ministry of Agriculture (OMAF) reimbursing the province for 40 percent of the total amount paid.

In Live Swine from Canada; Preliminary Results of Countervailing Duty Administrative Review (56 FR 29224; June 26, 1991) (Swine Fifth Review Preliminary Results), the Department found this program to be *de jure* specific and thus countervailable, because the program's legislation expressly makes it available only to livestock producers. This finding was unchanged in the final results of that review. The GOC has provided no new information to warrant reconsideration of this finding. To calculate the benefit, we divided the total payments to swine producers under this program by the total weight of live swine produced in Ontario during the review period. We then weight-averaged the result by Ontario's share of total Canadian exports of live swine to the United States during the review period. On this basis, we preliminarily determine the benefits from this program during the review period to be significantly less than Can$0.0001 per kilogram.

7. Saskatchewan Livestock Investment Tax Credit

Saskatchewan's 1984 Livestock Tax Credit Act provides tax credits to individuals, partnerships, cooperatives and corporations who owned and fed livestock marketed or slaughtered by December 31, 1989. This program was terminated on December 31, 1989. Claimants must be residents of Saskatchewan and pay Saskatchewan income taxes. Eligible claimants can receive credits of Can$25 for each bull, steer or heifer, Can$2 for each lamb and Can$3 for each hog. The tax credits may be carried forward for up to seven years.

In Swine First Review Preliminary Results (53 FR 22189; June 14, 1988), the Department found this program to be *de jure* specific and thus countervailable, because the program's legislation expressly makes it available only to livestock producers. This finding was unchanged in the final results of that review. The GOC has provided no new information to warrant reconsideration of this finding.

In the questionnaire response, the GOC estimated the amount of tax credits used by hog producers in Saskatchewan during the review period, since the actual amount was unavailable. To calculate the benefit, we divided this amount by the total weight of live swine produced in Saskatchewan. We then weight-averaged the result by Saskatchewan's share of total exports of live swine to the United States. On this basis, we preliminarily determine the benefit from this program to be Can$0.0005 per kilogram during the review period.

8. Saskatchewan Livestock Facilities Tax Credit Program

This program was implemented on January 1, 1986 and provides tax credits to livestock producers applying before December 31, 1989, for investment in livestock production facilities. The credit may only be used to offset provincial taxes. Applications for tax credits must be received by the Saskatchewan Ministry of Agriculture no later than six months after the project is completed. This program was terminated on December 31, 1989.

Livestock covered by this program can be raised for either breeding or slaughter. Eligible livestock include cattle, horses, sheep, swine, goats, poultry, bees, fur-bearing animals raised in captivity, or any other designated animals. Investments covered under the program include new buildings, improvements to existing livestock facilities, and any stationary equipment related to livestock facilities.

The program pays 15 percent of 95 percent of project costs, or 14.25 percent of total costs, so that it will not overlap with the Business Investment Tax Credit Program, a federal program. Participants

may carry forward any unused credit for up to seven years. In Swine Second and Third Review Preliminary Results (55 FR 20812; May 21, 1990), the Department found this program to be *de jure* specific and thus countervailable, because the program's legislation expressly makes it available only to livestock producers. This finding was unchanged in the final results of that review. The GOC has provided no new information to warrant reconsideration of this finding.

In the questionnaire response, the GOC estimated the amount of tax credits used by hog producers in Saskatchewan during the review period, since the actual amount was unavailable. To calculate the benefit, we divided this amount by the total weight of live swine produced in Saskatchewan during the review period. We then weight-averaged the result by Saskatchewan's share of total exports of live swine to the United States during the review period. On this basis, we preliminarily determine the benefits from this program during the review period to be Can$0.0003 per kilogram.

Other Programs

We have examined the following programs and preliminarily determine that Canadian exporters of live swine to the United States did not use them during the review period: (1) Canada/British Columbia Agri-Food Regional Development Subsidiary Agreement; (2) Canada/Quebec Subsidiary Agreement of Agri-food Development; (3) Canada/Manitoba Agri-Food Development Agreement; (4) Western Diversification Program; (5) Agricultural Products Board Program; (6) Canada/Alberta Swine Improvement Programs Study; (7) Canada/Ontario Canadian Western Agribition Livestock Transportation Assistance Program; (8) British Columbia Swine Herd Improvement Program; (9) Ontario Export Sales Aid; (10) Ontario Bear Damage to Livestock Program; (11) Ontario Dog Licensing and Livestock and Poultry Compensation Program; (12) New Brunswick Agriculture Development Act—Swine Assistance Program; (13) New Brunswick Swine Industry Financial Restructuring Program; (14) British Columbia Farm Income Insurance Program; (15) New Brunswick Livestock Incentives Program; (16) New Brunswick Hog Marketing Program; (17) New Brunswick Hog Price Stabilization Program; (18) New Brunswick Swine Assistance Policy on Boars; (19) Prince Edward Island Hog Price Stabilization Program; (20) Prince Edward Island Swine Development Program; (21) Prince Edward Island Interest Payment on Assembly Yard Program; (22) Nova Scotia Swine Herd Health Policy; (23) Nova Scotia Improved Sire Policy (24) Newfoundland Farm Products Corporation Hog Price Support Program; and (25) Newfoundland Weanling Bonus Incentive Policy.

We have examined the following programs and preliminarily determine that they have been terminated or that swine producers are no longer eligible: (26) Canada-Saskatchewan Agri-Food Development Agreement; (27) British Columbia Feed Grain Market Development Program; (28) Ontario Soil Conservation and Environmental Assistance Program; (29) Ontario Weaner Pig Stabilization Plan; (30) Nova Scotia Natural Products Act—Pork Price Stabilization Program; (31) Quebec Productivity and Consolidation of Livestock Production Program.

Preliminary Results of Review

Based on a request by the U.S. Customs Service, we are calculating the benefits for this and all future reviews on the basis of kilograms rather than pounds. As a result of our review, we preliminarily determine the net subsidy for the period April 1, 1990 through March 31, 1991 to be Can$0.0289 per kilogram.

Upon completion of this review, the Department intends to instruct the Customs Service to assess countervailing duties of Can$0.0289 per kilogram on shipments of all live swine exported on or after April 1, 1990 and on or before March 31, 1991. For assessment purposes, we also intend to instruct the Customs Service to use the exchange rate of Can$1.1603/US$1.00, which is the simple average annual exchange rate calculated for the review period using the rates reported monthly by the Federal Reserve Board in the Federal Reserve Bulletin.

The Department also intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of Can$0.0289 per kilogram on shipments of all live swine entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For cash deposit purposes, the Customs Service is to use the exchange rate in effect on the date the shipment is entered.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e) of the Department's regulations.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due under 19 CFR 355.38(c).

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: October 13, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-25711 Filed 10-19-93; 8:45 am]

BILLING CODE 3510-DS-P

National Oceanic and Atmospheric Administration

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of a Scientific Research Permit; U.S. Army Corps of Engineers (P504C).

On August 5, 1993, notice was published (58 FR 41737) that an application had been filed by the U.S. Army Corps of Engineers, to take listed species as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-222).

Notice is hereby given that on October 8, 1993 as authorized by the provisions of the ESA, NMFS issued Permit Number 880 for the above taking subject to certain conditions set forth therein.

Issuance of this Permit, as required by the ESA, as based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which is the subject of this Permit; (3) is consistent with the purposes and

policies set forth in section 2 of the ESA. This Permit was also issued in accordance with and is subject to parts 217–222 of title 50 CFR, the NMFS regulations governing listed species permits.

The application, permit, and supporting documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, room 13229, Silver Spring, MD 20910 (301–713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503–230–5400).

Dated: October 8, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–25686 Filed 10–19–93; 8:45 am]

BILLING CODE 3510–22–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange: Proposed Amendments Relating to the Delivery Procedures, Quality Standards and Delivery Point Specifications for the Live Cattle Futures Contract; Extension of Comment Period

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On October 1, 1993, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a Notice of Proposed Rulemaking relating to certain proposed amendments to the Chicago Mercantile Exchange's (CME's) live cattle futures contract. 58 FR 51320. The applicable comment period will expire on November 1, 1993. The Commission has received a request for an extension of the comment period. In light of the apparently widespread interest in the proposed amendments as well as their complexity and significance, and because of the Commission's concern that all interested parties have an adequate opportunity to submit informed comments, the Acting Director of the Division of Economic Analysis has determined on behalf of the Commission to extend the period for public comment.

DATES: The comment period will remain open through December 16, 1993.

ADDRESSES: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 and should make reference to the proposed changes in delivery procedures, quality standards, and delivery point specifications for the CME live cattle futures contract.

FOR FURTHER INFORMATION CONTACT: Frederick V. Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–7303.

Issued in Washington, DC, on October 15, 1993.

Blake Imel,

Acting Director.

[FR Doc. 93–25743 Filed 10–19–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Armament Retooling and Manufacturing Public/Private Task Force; Meeting

AGENCY: Armament Retooling and Manufacturing Support (ARMS) Public/Private Task Force (PPTF), DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public law 92–463, notice is hereby given of the next meeting of the Armament Retooling and Manufacturing Support (ARMS) Public/Private Task Force (PPTF). The PPTF is chartered to develop new and innovative methods to maintain the government-owned, contractor-operated ammunition industrial base and retain critical skills for a national industrial emergency. Purpose of this meeting is to evaluate and offer recommendations regarding the ARMS Initiative Implementation Plan (AIIP); additional ARMS Initiative incentives; regulatory waivers, deviations, or changes; and ARMS Initiative legislative supplements or changes. This session is open to the public.

DATES: November 16–18, 1993.

ADDRESSES: Holiday Inn, Oakland Park, 4505 Woodson Way, St. Louis, Missouri.

FOR FURTHER INFORMATION CONTACT: Mr. R.B. Auger, ARMS Task Force, HQ Army Materiel Command, 5001 Eisenhower Avenue, Alexandria Virginia 22333; Phone (703) 274–9838.

SUPPLEMENTARY INFORMATION: Reservations should be made directly with the Holiday Inn; telephone 1–800–426–4700. Please be sure to mention that you will be attending the ARMS meeting to get in the block of rooms set aside for this meeting. Request you contact Donna Ponce in the ARMS Team Office at Rock Island Arsenal; telephone (309) 782–3058/4040, if you will be attending the meeting, so that our roster of attendees is accurate. This number may also be used if other assistance regarding the ARMS meeting is required.

Dated: October 15, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–25726 Filed 10–19–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Availability of U.S. Patents for Non-exclusive, Exclusive or Partially Exclusive Licensing

AGENCY: U.S. Army Armament Research Development and Engineering Center, DOD.

ACTION: Notice.

In accordance with 37 CFR 404.6 announcement is made of the availability of the following U.S. patents for non-exclusive, exclusive or partially exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

These patents cover a wide variety of technical arts including transportation simulator, adhesive bonding, improvements to small arms, insensitive explosive composition, as well as many other different technical arts.

Title: Jointed Conveyor
Inventor: Earl D. Richey
Patent No: 4,542,819—9/24/85

Title: Pneumatic Key Lock
Inventor: Roy A. Zangrando
Patent No: 4,601,183—7/22/86

Title: Breadbreaker Apparatus and Method of Using
Inventor: Robert O. Richardson
Patent No: 4,646,806—3/3/87

Title: Adhesive Bonding
Inventor: Robert Rosty, W. Levi
Patent No: 4,835,016—5/30/89

Title: Methods for Producing Composite Materials of Metal Matrix Containing Tungsten Gain
Inventor: Deepak Kapoor
Patent No: 4,835,016—5/30/89

Title: Collision Centrifugal Atomization Unit
Inventor: Monde A. Otooni
Patent No: 5,149,063—9/22/92

Title: Weapon Cartridge Feeder Apparatus and Method
Inventor: Giulio V. Savioli
Patent No: 4,587,879—5/13/85

Title: Dead Bolt Lock Operable by Pressurized Fluid
Inventor: Roy A. Zangrando
Patent No: 4,647,089—3/3/87

Title: Shipboard Transportation Simulator
Inventor: Gayle T. Zajicek
Patent No: 4,822,281—4/18/89

Title: Insensitive High Energy Explosive Compositions
Inventors: Mark Mezger, Bernard Strauss, Sam M. Moy, Joseph L. Prezelski
Patent No: 4,842,659—6/27/89

Title: Slide Safety Stop for Pistols and Other Small Arms
Inventor: Edward J. Brennan
Patent No: 5,129,172—7/14/92

Under the authority of section 11(a) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and section 207 of title 35, United States Code, the Department of the Army as represented by the Army Research Development and Engineering Center wishes to license the U.S. patents listed in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling de vices of processes covered by these patents.

FOR FURTHER INFORMATION CONTACT: For further information or copies of the patents listed contact Mr. Edward Goldberg, Chief Patent Counsel, (201) 724–6590.

ADDRESSES: Commander, U.S. Army Research and Engineering Center, ATTN: SMCAR–GCL, Picatinny Arsenal, New Jersey 07806–5000.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–25700 Filed 10–19–93; 8:45 am]

BILLING CODE 5000–03–M

Annual Meeting—National Board for the Promotion of Rifle Practice

AGENCY: Department of the Army, DoD.

ACTION: Notice.

In compliance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given for the Annual Meeting of the National Board for the Promotion of Rifle Practice (NBPRP).

Date: December 8, 1993.

Place: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA 22314.

Agenda:

—Opening Prayer and Pledge of Allegiance to the Flag
—Federal Register Notice of the Meeting
—Roll Call
—Approval of previous Board minutes
—Report on the budget review/presentation
—Report on the 1993 National matches
—Report on Army Audit Agency report
—Old business
—New business

This meeting is open to the general public but space is limited. Point of Contact is Mr. Dennis Galoci, Office of the Director of Civilian Marksmanship, Washington, DC 20314–0100, telephone: (202) 272–0810.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–25792 Filed 10–19–93; 8:45 am]

BILLING CODE 5000–03–M

Proposal To Revise Trip Leasing Program

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: The purpose of this proposal is to simplify trip leasing procedures for DOD freight established in November 1988. MTMC proposes to revise its trip lease approval program allowing DOD approved carriers to trip lease amongst themselves.

DATES: Comments must be received on or before November 19, 1993.

ADDRESSES: Commander, Military Traffic Management Command, ATTN: (MTOP–QE) Mrs. Shirley Stachkunas), room 629, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mrs. Shirley Stachkunas, (703) 756–1292.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1988, MTMC formally established a program to approve carriers trip leasing DOD freight. The program rules were published in the **Federal Register** and became effective November 1988. The requirement is published in the MTMC Freight Traffic Rules Publication No. 1A (MFTRP No. 1A), item 2 30. It currently states:

Effective October 1, 1988, only carriers approved by MTMC will be able to trip lease equipment to transport DOD freight.

All carriers desiring to trip lease equipment to transport DOD freight must be approved by MTMC and have a signed agreement on file with MTMC authorizing the carrier to trip lease. Request for approval to trip lease should be sent to Commander, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MTIN–FF.

Carriers failing to have trip lease approval from MTMC and/or failing to execute proper leases in accordance with 49 CFR 1057 will be considered as providing improper or inadequate equipment and may be nonused or disqualified by MTMC or the shipping activity.

The most current MFTRP no. 1A is dated May 1, 1989. The program rules prohibit carriers from trip leasing (leases of less than 30 days) DOD freight with or without drivers except upon prior approval include the operating authority certificate, certificates of public liability and cargo insurance, a copy of the standard lease agreement, and the executed "Agreement between the Military Traffic Management Command and Motor Common Carriers for Approval to Trip Lease Equipment to Transport Department of Defense Freight." The rationale for the program was to maintain control over shipments, as well as to ensure carriers provide DOD with satisfactory service.

MTMC wants to simplify the trip leasing process for moving DOD freight. MTMC proposes to only allow trip leasing amongst carriers approved to handle DOD freight. Further, MTMC proposes eliminating the program requirement for carriers to get approval to trip lease. This should reduce the administrative burden on carriers as they will only be required to be approved under the Carrier Qualification Program. The carrier will bear the burden of regulatory compliance. Performance action will still be taken against carriers who fail to comply with 49 CFR 1057.11. Item 230 of MFRTP No. 1A will be changed as follows:

Carriers desiring to trip lease will only do so with other Department of Defense (DOD) approved carriers. The requirements of 49 CFR will be adhered to. Failure to comply with the regulatory requirements can result in nonuse or disqualification by MTMC.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–25699 Filed 10–19–93; 8:45 am]

BILLING CODE 5000–03–M

Department of the Navy

Intent To Prepare an Environmental Impact Statement for Proposed Realignment of the Naval Air Station, Pensacola, Florida

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of the relocation of the Naval Aviation Technical Training Center, other tenants of Naval Air Station (NAS) Memphis, Tennessee, and a small school from the Naval Training Center (NTC) San Diego,

California, to NAS Pensacola, Florida. This realignment is being conducted in compliance with the Defense Base Closure and Realignment Act of 1990.

The proposed action involves the relocation of personnel and activities from NAS Memphis and NTC San Diego to NAS Pensacola. Under the current base closure scenario, all service and apprentice schools, the Naval Aviation Maintenance Training Group, the Chief of Naval Technical Training, and the Naval Education and Training Program Management Systems Activity Detachment will relocate from NAS Memphis, and the MS "A" school (messman specialist school) from NTC San Diego will be consolidated at NAS Pensacola. The consolidation of service schools at NAS Pensacola will increase the current average number of students by approximately 4,500 students. Also, approximately 2,200 additional personnel, with their dependents, will relocate to support the various schools. Several military construction projects are required to upgrade existing facilities and construct new facilities to support the increased operations. This will include new administrative, training, and instructional facilities, bachelor quarters, and approximately 116 new family housing units.

Alternatives addressed in the EIS will focus on means of meeting realignment requirements at NAS Pensacola, including alternative construction site locations. Major environmental issues that will be addressed in the EIS include, but are not limited to, socioeconomic impacts, water quality, wetlands, endangered species, cultural resources and local infrastructure impacts.

The Navy will initiate a coping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. The Navy will hold a public scoping meeting on November 3, 1993, beginning at 7 p.m., at the Pensacola Junior College, Warrington Campus, room 3000, 5555 West Highway Street 98, Pensacola, Florida. This meeting will be advertised in Pensacola and selected local newspapers.

A brief presentation will precede request for public comment. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commenter believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed no later than December 3, 1993, to Commanding Officer, Southern Division, Naval Facilities Engineering Command, 2155 Eagle Drive, P.O. Box 190010, North Charleston, South Carolina 29419–9010 (Attn: Mr. Ronnie Latimore, Code 203RL), telephone (803) 743–0888.

Dated: October 15, 1993.

Saundra K. Melancon,

Alternate Federal Register Liaison Officer.

[FR Doc. 93–25747 Filed 10–19–93; 8:45 am]

BILLING CODE 3810–AE–M

Second Public Hearing for the Draft Environmental Impact Statement for the Management of Air Operations at Naval Air Station Whidbey Island, Oak Harbor, Washington

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for the Management of Air Operations at Naval Air Station Whidbey Island, Oak Harbor, Washington.

A public hearing to inform the public of the DEIS findings and to solicit comments was held on September 29, 1993, in Oak Harbor, Washington. Several oral and written comments have requested extension of the DEIS review period and a second public hearing. The Navy has agreed to both requests and will extend the comment period for 45 days. All written comments must now be postmarked by November 26, 1993, to become part of the official record. The Navy will also conduct a second public hearing to present information about the DEIS and to provide additional opportunity for the public to make oral comment. This second hearing will be held on November 10, 1993 at 5 p.m. in the Oak Harbor High School Commons Area, Oak Harbor, Washington.

The public hearing will be conducted by the Navy. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statement, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five minutes. Because of the large number of speakers expected, we will not be able to permit a speaker to defer speaking time to another speaker. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by November 26, 1993, to become part of the official record.

The DEIS addresses the Navy's proposal to modify previous air operations management programs to incorporate specific flight pattern redistribution, aircraft operations guidelines, and an annual Field Carrier Landing Practice (FCLP) operations distribution goal between the existing field assets of Ault Field and Outlying Landing Field (OLF) Coupeville. This proposal meets the Navy's need to provide effective environmental compliance while planning for and meeting assigned military mission requirements necessary to ensure fleet readiness and aircrew proficiency. The DEIS addresses air operations management changes which can mitigate adverse environmental effects of air operations. Discussed are the issues of air traffic, noise, public health and safety of air operations, land use, population and housing, aesthetics, socioeconomics, historic resources, slope stability, air quality, water quality, and biological resources. Alternatives assessed in the DEIS focus on various distributions of FCLP training between Ault Field and OLF Coupeville, with all other air operations conducted at Ault Field.

Additional information concerning this notice may be obtained by contacting: Mr. Peter Havens (Code 203PH), Engineering Field Activity-Northwest, Naval Facilities Engineering Command, 3505 NW. Anderson Hill Road, Silverdale, WA 98383, telephone (206) 396–5976.

Dated: October 15, 1993.

Saundra K. Melancon,

Alternate Federal Register Liaison Officer.

[FR Doc. 93-25748 Filed 10-19-93; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

National Advisory Council on Educational Research and Improvement; Meeting

AGENCY: National Advisory Council on Educational Research and Improvement, Education.

ACTION: Full council meeting of the National Advisory Council.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Educational Research and Improvement. This notice also describes the functions of the Council. Notice of this meeting is required section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: November 4 and 5, 1993, 9 a.m. to 4 p.m.

ADDRESSES: President's Conference Room, Commons Building, University of Richmond, Richmond, VA 23173.

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Executive Director, National Advisory Council on Educational Research and Improvement, 330 C Street, SW., Washington, DC 20202-7579, (202) 205-9004.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Educational Research and Improvement is established under section 405 of the 1972 Education Amendments, Public Law 92-318, as amended by the Higher Education Amendments of 1986, Public Law 99-498, (20 U.S.C. 1221e). The Council is established to advise the President, the Secretary of Education and the Congress on policies and activities carried out by the Office of Educational Research and Improvement (OERI). The meeting of the Council is open to the public. The proposed agenda for November 4 includes presentations on the Jepson School of Leadership Studies and the Women's Resource Center, both based at the University. On November 5, the meeting will focus on the theme of promoting Lifelong Learning. The final agenda will be available from the Council office on October 29.

Records are kept of all Council Proceedings and are available for public inspection at the Office of the National Advisory Council on Educational Research and Improvement, 330 C Street, SW., suite 4076, Washington, DC 20202-7579, from 9 a.m. to 5 p.m. Monday through Friday.

Dated: October 14, 1993.

Mary Grace Lucier,

Executive Director.

[FR Doc. 93-25688 Filed 10-19-93; 8:45 am]

BILLING CODE 4000-01-M

Federal Interagency Coordinating Council; Meeting

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council. Notice of this meeting is required under section 685(c) of the Individuals with Disabilities Education Act, as amended, and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

DATE AND TIME: November 4, 1993, from 1:30 p.m. to 4:30 p.m.

ADDRESSES: Hubert H. Humphrey Building, room 800, 200 Independence Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Connie Garner, U.S. Department of Education, 400 Maryland Avenue, SW., room 4613, Switzer Building, Washington, DC 20202-2644. Telephone: (202) 205-8124. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205-8170.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 685 of the Individuals with Disabilities Education Act, as amended (20 U.S.C. 1484a). The Council is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

At this meeting the FICC plans to: (1) Discuss State correspondence concerning funding issues around the implementation of Part H; and (2) discuss the implications of health care reform for infants, toddlers and preschoolers with disabilities.

The meeting of the FICC is open to the public. Written public comment will be accepted at the conclusion of the meeting. These comments will be included in the summary minutes of the meeting. The meeting will be physically accessible with meeting materials provided in both braille and large print. Interpreters for persons who are hearing impaired will be available. Individuals with disabilities who plan to attend and need other reasonable accommodations should contact the contact person named above in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 400 Maryland Avenue, SW., room 4613, Switzer Building, Washington, DC 20202-2644, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal holidays.

Dated: October 14, 1993.

Andrew Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93-25691 Filed 10-19-93; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Hot Dry Rock Geothermal Energy Systems; Development of a Facility To Produce and Market Electric Power or Thermal Energy

AGENCY: Department of Energy, Albuquerque Operations Office (DOE/AL).

ACTION: Amendment of prior notice.

SUMMARY: DOE/AL is soliciting comments and expressions of interest in developing a cost-shared, industry-led project to develop a prototype facility to produce and market electric power or heat generated from geothermal energy in hot dry rock.

DATES: Statement of interest should be received at DOE/AL on or before December 17, 1993.

FOR FURTHER INFORMATION CONTACT:

Mr. Nyles Lackey, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, New Mexico 87185–5400, Telephone: (505) 845–4257.

This notice amends the prior notice published on September 14, 1993. The due date for receipt of statements of interest is extended from October 29, 1993 to December 17, 1993. All statements of interest are to be sent to the attention of Mr. Nyles Lackey at the address listed above. Questions concerning this matter should be directed to Mr. Lackey.

Issued in Albuquerque, New Mexico on October 5, 1993.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 93–25796 Filed 10–6–93; 8:45 am]

BILLING CODE 6450–01–M

Inventions Available for License

AGENCY: Department of Energy, Office of General Counsel.

ACTION: Notice of invention available for license.

SUMMARY: The U.S. Department of Energy hereby announces that U.S. Patent No. 5,022,996, entitled "Method of Separating Organic Contaminants From Fluid Feedstreams With Polyphosphazene Membranes," is available for license, in accordance with 35 U.S.C. 207–209. A copy of the patent may be obtained, for a modest fee, from the U.S. Patent and Trademark Office, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT:

Robert J. Marchick, Office of the Assistant General Counsel for Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone (202) 586–2802.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 207 authorizes licensing of Government-owned inventions. Implementing regulations are contained in 37 CFR part 404. 37 CFR 404.7(a)(1) authorizes exclusive licensing of Government-owned inventions under certain circumstances, provided that notice of the invention's availability for license has been announced in the Federal Register.

Issued in Washington, DC, on October 14, 1993.

Robert R. Nordhaus,

General Counsel.

[FR Doc. 93–25798 Filed 10–19–93; 8:45 am]

BILLING CODE 6450–01–M

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Acting Assistant General Counsel for International Affairs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–2900.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on October 27, 1993, at the headquarters of the Organization for Economic Cooperation and Development (OECD), 2, rue Andre-Pascal, Paris, France, beginning at 9:15 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is scheduled to be held at the OECD offices on that date, including a preparatory meeting among company representatives.

The Agenda for the meeting is under the control of the SEQ. It is expected that the following draft Agenda will be follows:

1. Adoption of the Agenda
2. Summary Record of the 79th Meeting
3. Workshop on Emergency Reserve Management and Stockdraw
4. Emergency Management Manual and Related Documents
   —Emergency Management Manual
   —Emergency Operations Reference Guide
   —Industry/Secretariat Operations Manual
5. The Emergency Response Potential of IEA Countries
   —Follow-up to Emergency Response Review Recommendations
6. Emergency Reserve Situation and Developments
   —Emergency Reserve and Net Import Situation of IEA Countries on July 1, 1993
   —SEQ Report to the Governing Board on the Emergency Reserve Situation of IEA Countries
7. Emergency Data System and Related Questions
   —The Quality of Questionnaire C Data
   —Monthly Oil Statistics (MOS) to June 1993
   —MOS to July 1993
   —Base Period Final Consumption Q392–Q293
   —Quarterly Oil Forecast
8. Main lines of SEQ Program of Work for 1994
9. Any other business

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting is open only to representatives of members of the IAB and their counsel, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of the Congress, the IEA, the Commission of the European Communities, and invitees of the IAB, the SEQ or the IEA.

Issued in Washington, DC, October 14, 1993.

Robert R. Nordhaus,

General Counsel.

[FR Doc. 93–25716 Filed 10–19–93; 8:45 am]

BILLING CODE 6450–01–M

Advisory Committee for National Electric and Magnetic Fields Research and Public Information Dissemination Program; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of a meeting of the National Electric and Magnetic Fields Advisory Committee.

DATES: Thursday, November 4, 1993: 1:30 p.m.–5:30 p.m. Friday, November 5, 1993: 8:45 a.m.–4:30 p.m.

ADDRESSES: Savannah DeSoto Hilton, 15 E Liberty Street, Savannah, GA, 31401.

FOR FURTHER INFORMATION CONTACT: Robert Brewer, Director, Utility Systems Division, EE–141, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2828.

SUPPLEMENTARY INFORMATION: The National Electric and Magnetic Fields Advisory Committee advises the Department of Energy and the National Institute of Environmental Health Sciences on the design and implementation of a five-year, National Electric and Magnetic Fields Research and Public Information Dissemination Program. The Secretary of Energy, pursuant to section 2118 of the Energy Policy Act of 1992, Pub. L. 102–486, has overall responsibility for establishing the national program which includes health effects research, development of technologies to assess and manage

exposures, and dissemination of information.

Tentative Agenda

Thursday, November 4, 1993

1:30 p.m. Welcome and opening remarks
1:45 p.m. Status report on implementation of Section 2118 of the Energy Policy Act
2:15 p.m. Electric Power Research Institute presentation on electric and magnetic fields research and communication
2:45 p.m. Presentations on electric and magnetic fields research and communication by the National Institute of Occupational Safety and Health, the Food and Drug Administration, the National Cancer Institute, and the National Institute of Environmental Health Sciences (existing grants program and the National Toxicology Program).
3:30 p.m. Break
3:50 p.m. Presentations on electric and magnetic fields research and communication by the Environmental Protection Agency, the Department of Transportation, and the Department of Defense
4:35 p.m. Committee questions and discussion
5:30 p.m. Adjourn

Friday, November 5, 1993

9:00 a.m. Presentation on revised draft research and communication plan by the National Institute of Environmental Health Sciences.
9:30 a.m. Minutes and Committee organization
10:30 a.m. Break
10:45 a.m. Advisory Committee discussion of current and future program budgets
12:00 a.m. Lunch
1:30 p.m. Advisory Committee discussion of program plans and priorities
3:00 p.m. Break
3:15 p.m. Open time for public comments
4:30 p.m. Adjourn

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Robert Brewer at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. Depending on the number of requests, comments may be limited to five minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcript and Minutes

A transcript and minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Copies of the minutes will also be available by request.

Issued at Washington, DC, on October 15, 1993.

Rachel M. Samuel,

Acting Advisory Committee Management Officer.

[FR Doc. 93-25799 Filed 10-19-93; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96-511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before November 19, 1993. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION CONTACT:

Jay Casselberry, Office of Statistical Standards, (E-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254-5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration.

2. EIA-176, EIA-191, EIA-191S, EIA-627, EIA-857, and EIA-857S.

3. 1905-0175.

4. Natural Gas Program Package.

5. Revision—**Federal Register** notice was published on April 5, 1993 (58 FR 17579) requesting comments on these forms. Since that time, additional revisions have been made to improve the quality of the data collections. Two schedules have been added to the Form EIA-176 to collect data on natural gas transportation rates and on alternative fueled fleet vehicles.

6. Standby (EIA-191S and EIA-857S); Monthly (EIA-191 and EIA-857); and Annually (EIA-176 and EIA-627).

7. Mandatory.

8. Business or other for-profit; State or local governments.

9. 2,325 respondents.

10. 3.5 responses.

11. 16.72 hours per response.

12. 135,711 hours.

13. The Natural Gas Program Package forms collect production, processing, transmission, storage, consumption, and price data. The data are used to address significant energy industry issues. Data from these forms are published in various EIA publications. Respondents are pipeline companies, distributors, storage operators, plant operators, and state agencies.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. 96-511), which amended chapter 35 of title 44 United States Code (See 44 U.S.C. 3506(a) and (c)(1)).

Issued in Washington, DC, October 14, 1993.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 93-25797 Filed 10-19-93; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER94-4-000, et al.]

Wisconsin Electric Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 13, 1993.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Electric Power Co.

[Docket No. ER94-4-000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on October 4, 1993, tendered for filing a Construction, Operating and Maintenance Agreement between itself and the City of Hartford, Wisconsin (Hartford). Wisconsin Electric respectfully requests an effective date of October 1, 1993, coincident with the expected in-service date of the substation. Wisconsin Electric is authorized to state that Hartford joins in the requested effective date.

Copies of the filing have been served on Hartford and the Public Service Commission of Wisconsin.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Mid-Continent Area Power Pool

[Docket No. ER93-982-000]

Take notice that on September 20, 1993, the Mid-Continent Area Power Pool (MAPP) filed on behalf of the investor-owned public utility members of MAPP revisions to the MAPP Agreement to create a new standing committee called the Operating Review Committee.

The revisions have been approved by the members of the pool and MAPP requests an effective date of October 1, 1993.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. PSI Energy, Inc.

[Docket No. ER93-806-000]

Take notice that PSI Energy, Inc. (PSI) and The City of Piqua, Ohio on September 24, 1993, tendered for filing corrected Service Schedules to the amended Service Schedules in the FERC filing in Docket No. ER93-806-000.

Copies of the filing were served on The City of Piqua, Ohio, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Electric and Gas Co.

[Docket No. ER93-971-000]

Take notice that on September 24, 1993, Public Service Electric and Gas Company (PSE&G) tendered for filing, pursuant to Rule 205(c) of the Federal Power Act, an agreement between PSE&G and Wheelabrator Falls Inc. (WPI) providing for the construction of a direct interconnection between WPI's qualifying facility and PSE&G's transmission system to facilitate the delivery of electricity from WFI's facility to PSE&G pursuant to a power purchase agreement.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Electric Co.

[Docket No. ER94-1-000]

Take notice that on October 1, 1993, Commonwealth Electric Company (Commonwealth) filed, pursuant to section 205 of the Federal Power Act and the implementing provisions of § 35.13 of the Commission's Regulations, a proposed change in rate under its currently effective Rate Schedule FERC No. 6.

Commonwealth states that said change in rate under Commonwealth's Rate Schedule FERC No. 6 has been computed according to the provisions of Section 6(b) of its Rate Schedule FERC No. 6. Such change is proposed to become effective January 1, 1993, thereby superseding the 23 Kv Wheeling Rate in effect during the calendar year 1992. Commonwealth has requested that the Commission's notice requirements be waived pursuant to Section 35.11 of the Commission's Regulations in order to allow the tendered rate change to become effective as of January 1, 1993.

Copies of this filing have been served upon Boston Edison Company and the Massachusetts Department of Public Utilities.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Philadelphia Electric Co. and The Susquehanna Electric Co.

[Docket No. ER94-8-000]

Take notice that on October 6, 1993, Philadelphia Electric Company (PE) and The Susquehanna Electric Company (SE) tendered for filing a supplement to the Tri-partite Agreement dated May 1, 1972 between PE, SE and Conowingo Power Company (COPCO) which is on file as PE's Rate Schedule FPC No. 36 and SE's Rate Schedule FPC No. 2.

PE and SE state that a copy of this filing has been served by mail upon COPCO, the Maryland Public Service Commission, the Maryland Office of People's Counsel, and the Pennsylvania Public Utility Commission.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corp.

[Docket No. ER93-916-000]

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk), on October 6, 1993, tendered for filing an amendment to its original filing in Docket No. ER93-916-000. The subject of this docket is an agreement between Niagara Mohawk and the New York Power Authority (NYPA) which provides for certain interruptible transmission services.

The effective date of November 1, 1993, is requested by Niagara Mohawk.

Copies of this filing were served upon NYPA and the New York State Public Service Commission.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket No. ER93-739-000]

Take notice that Entergy Services, Inc. (Entergy Services), as agent for Louisiana Power & Light Company (LP&L), on October 5, 1993, tendered for filing Amendment No. 1 to Service Schedule ES—Emergency Services (Amendment), between LP&L and Southwestern Electric Power Company (SWEPCO). Service Schedule ES is a service schedule to the Agreement between LP&L and SWEPCO, which was filed on June 29, 1993, and was subsequently amended on August 11, 1993. The purpose of the Amendment is to revise Service Schedule ES to specify a 4.4 mill/kWh adder, plus incremental increases or decreases in transmission losses, to apply where LP&L purchases energy to be supplied under that schedule.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Puget Sound Power & Light Co.

[Docket No. ER94-3-000]

Take notice that on October 4, 1993, Puget Sound Power & Light Company (Puget) tendered for filing an initial rate schedule between the British Columbia

Hydro and Power Authority (B.C. Hydro) and Puget, dated as of July 1, 1976 (the Agreement). A copy of the filing was served upon B.C. Hydro.

Puget states that the Agreement relates to an interconnection between Puget and B.C. Hydro located on the Canada-U.S.A. border, over which B.C. Hydro's sale of electric energy to Puget is delivered for distribution to Puget's retail customers in Point Roberts, Washington. Puget requests the Commission to disclaim jurisdiction over the Agreement.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Puget Sound Power & Light Co.

[Docket No. ER94-7-000]

Take notice that on October 5, 1993, Puget Sound Power & Light Company (Puget) tendered for filing an initial rate schedule between Elmhurst Mutual Power & Light Company (Elmhurst) and Puget, dated as of August 1, 1991 (the Agreement). A copy of the filing was served upon Elmhurst.

Puget states that the Agreement relates to Elmhurst's attachment of some of its electric distribution lines and related equipment to certain Puget utility poles. Puget requested the Commission to disclaim jurisdiction over the Agreement.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. InterCoast Power Marketing Co.

[Docket No. EL94-1-000]

Take notice that InterCoast Power Marketing Company (InterCoast) on October 5, 1993, tendered for filing pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207 (1988), a petition for a disclaimer of jurisdiction under section 201 of the Federal Power Act, for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule 1, to be effective as of December 3, 1993. InterCoast is an indirect wholly-owned subsidiary of Iowa-Illinois Gas and Electric Company, a public utility.

InterCoast contends to engage in electric power and energy transactions as a broker and a marketer. InterCoast will function as a broker in transactions where it does not take title to power or energy. InterCoast will act as a marketer in transactions where it purchases power, capacity and related services from producers and resells such power to other purchasers.

Rate Schedule 1 provides for the sale of energy at agreed prices subject to a ceiling equal to the purchaser's alternative cost of electric power. Rate Schedule 1 also provides that (1) no sales may be made to affiliates, (2) no sales of power purchased from an affiliate may be made, (3) no sales may be made to a party directly connected to the transmission facilities of an affiliate, and (4) no sales may be made which require the use of an affiliate's transmission facilities.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Citizens Utilities Co.

[Docket No. ER94-5-000]

Take notice that Citizens Utilities Company (Citizens) on October 4, 1993, tendered for filing a Transmission Tariff for back-up transmission service for the Village of Swanton, Vermont (Swanton).

As more fully set forth therein, the Transmission Tariff provides that Swanton may receive back-up transmission service from Citizens.

Citizens requests waiver of the notice requirements of section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of October 1, 1993.

Citizens states that a copy of its filing was served on Swanton and the Vermont Public Service Board.

Comment date: October 28, 1993, in accordance with Standard Paragraph E end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25702 Filed 10-19-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-161-002]

Calciner Industries, Inc.; Amendment to Filing

October 14, 1993.

On October 7, 1993, Calciner Industries, Inc. tendered for filing a supplement to its filing in this docket.

The supplement pertains to the ownership structure and technical aspects of its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by November 4, 1993, and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25707 Filed 10-19-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-773-000]

Cambridge Electric Light Co.; Filing

October 14, 1993.

Take notice that on October 7, 1993, Cambridge Electric Light Company (Cambridge) tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25745 Filed 10–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–17–000]

East Tennessee Natural Gas Co.; Request Under Blanket Authorization

October 14, 1993.

Take notice that on October 12, 1993, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP94–17–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new delivery point under East Tennessee's blanket certificate issued in Docket No. CP82–412–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

East Tennessee proposes to establish a new delivery point at M.P. 3215 – 1+10.55 on its Lobelville-Topside Line in Bradley County, Tennessee, for the delivery of up to 8,500 dekatherms per day of natural gas (the maximum capacity of the meter) for the account of Chattanooga Gas Company (Chattanooga). East Tennessee states that a 6-inch hot tap, approximately 100 feet of interconnecting 6-inch pipe, and measurement facilities would be installed on a site provided by Chattanooga adjacent to East Tennessee's existing right-of-way. East Tennessee explains that the related firm transportation service would be performed under its Rate Schedule FT, and that the gas would be used by additional customers in the Bradley County Area. East Tennessee estimates that the facilities would cost $75,913 which would be reimbursed by Chattanooga.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25704 Filed 10–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–15–000]

Florida Gas Transmission Co.; Request Under Blanket Authorization

October 14, 1993.

Take notice that on October 12, 1993, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP93–15–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point in Marion County, Florida, for West Florida Natural Gas Company (WFNG) under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to construct and operate a tap, about 80 feet of 4-inch pipe, a meter station and appurtenant facilities at a cost of $260,000 which would be reimbursed by WFNG. FGT states that it would deliver up to 9,000 MMBtu per day and up to 2,004,180 MMBtu per year. FGT also states that the proposal would not impact FGT's peak day or annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25705 Filed 10–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–19–000]

Mississippi River Transmission Corp.; Limited Waiver

October 14, 1993.

Take notice that on October 4, 1993, Mississippi River Transmission Corporation (MRT) filed a request with the Commission for authority necessary to permit it to continue to perform under a certificated Agreement and Exchange and Sale of Natural Gas between MRT and Natural Gas Pipeline Company of America (Natural).

MRT requests that the Commission grant it a limited waiver of a provision of its tariff and any of the Commission's regulations which are necessary to permit MRT to continue this exchange and sale arrangement.

MRT requests that the Commission grant it a limited waiver of Section 2.3 of Rate Schedule USAS in MRT's tariff to permit it to continue transporting the Mills Ranch Field production over MRT's gathering facilities to the point of interconnect with Natural's transmission facilities so that the parties can continue their certificated exchange and sale arrangement for the remaining term of the agreement, or until MRT can successfully negotiate buyout agreements with the Mills Ranch producers.

MRT states that copies of the filing have been served upon all persons designated on the official service list compiled by the secretary.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25708 Filed 10-19-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-133-000]

Portland General Electric Co.; Filing

October 14, 1993.

Take notice that PacifiCorp, on September 16, 1993, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, a Certificate of Concurrence in the Assignment and Agreement Relating to Canadian Entitlement Exchange Agreement (CSPE Agreement), Contract No. 14-03-60376 and the CSPE Agreement, contract No. 14-03-47308, as filed by Portland General Electric Company (PGE) in the above referenced docket. PacifiCorp also tendered its Exhibit C to the CSPE Agreement for filing.

PacifiCorp requests a waiver of prior notice requirements in accordance with 18 CFR 35.11 of the Commission's rules and regulations be granted and that an effective date of April 1, 1968 be assigned. The waiver will have no effect on PacifiCorp's purchasers under other rate schedules.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 26, 1993. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25744 Filed 10-19-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EG94-1-000]

UC Operating Services; Application for Commission Determination of Exempt Wholesale Generator Status

October 14, 1993.

On October 12, 1993, UC Operating Services ("UCOS"), a California general partnership with its principal place of business at 9681 Broken Land Parkway, Columbia, Maryland 21046, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

UCOS intends to provide operating services for a pulverized coal-fired cogeneration facility with a maximum net power production capacity of between approximately 165 MW (summer) and 167 MW (winter). All of the facility's electric power net of the facility's operating electric power will be purchased at wholesale by one or more public utilities.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before October 29, 1993, and must be served on UCOS. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25706 Filed 10-19-93; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 93-95-NG]

The Consumers Gas Co. Ltd.; Order Granting Blanket Authorization To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting The Consumers Gas Company Ltd. authorization to export up to 100 Bcf of natural gas to Canada over a two-year term, beginning on the date of first delivery after December 15, 1993.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 12, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-25802 Filed 10-19-93; 8:45 am]

BILLING CODE 6450-01-P

[FE Docket No. 93-86-NG]

Northern California Power Agency; Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Northern California Power Agency authorization to import up to 16 Bcf of natural gas from Canada for a two-year term beginning on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 6, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-25801 Filed 10-19-93; 8:45 am]

BILLING CODE 6450-01-P

[FE Docket No. 93-107-NG]

Pacific Gas Transmission Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Pacific Gas Transmission Company authorization to import up to 1 Bcf of natural gas from Canada over a two-year

term, beginning on the date of first delivery.

This order is available for inspection and copying in the Office of Fuels Programs docket room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 13, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–25803 Filed 10–19–93; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 93–92–NG]

Wisconsin Natural Gas Co.; Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has granted Wisconsin Natural Gas Company (WGN) authorization to import up to 37,260 Mcf per day of Canadian natural gas for ten years beginning November 1, 1993. This gas would be imported from ProGas Limited and Western Gas Marketing Limited as a result of ANR Pipeline Company's unbundling of its gas supply arrangements under the restructuring requirements of Order 636 issued by the Federal Energy Regulatory Commission.

WGN's order is avilable for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 13, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–25800 Filed 10–19–93; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Cases Filed During the Week of July 23 Through July 30, 1993

During the Week of July 23 through July 30, the applications for relief listed in the Appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 14, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

Date received	Name of refund proceeding/name of refund application	Case No.
7/26/93	Charter International Oil Co	RF351–5
7/26/93	Austin Hydro Gas Co., Inc	RF340–189
7/27/93	Sysco Frosted Foods, Inc	RC272–211
7/27/93	Rhode Island College	RR336–74
7/23/93	Iren S. Light, Inc	RF300–21750
7/23/93 thru 7/30/93	Atlantic Richfield, Applications received	RF304–14253 thru RF304–14281
7/23/93 thru 7/30/93	Texaco Refund, Applications received	RF321–19813 thru RF321–19822
7/23/93 thru 7/30/93	Crude Oil Refund, Applications received	RF272–94795 thru RF272–94807
7/23/93 thru 7/30/93	Citronelle refund, Applications received	RF336–38 thru RR336–74

[FR Doc. 93–25795 Filed 10–19–93; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Cases Filed During the Week of August 13 Through August 20, 1993

During the Week of August 13 through August 20, 1993, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 14, 1993.

George B. Breznay

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 17 through August 20, 1993]

Date	Name and Location of Applicant	Case No.	Type of Submission
Aug. 17, 1993	L & M Technologies, Albuquerque, New Mexico.	LWZ–0022	Interlocutory. If granted: The request for a hearing by an alleged whistleblower (Case No. LWA–0001) Ronald Sorri would be dismissed.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of August 17 through August 20, 1993]

Date	Name and Location of Applicant	Case No.	Type of Submission
Aug. 19, 1993 .	Cicero School District 99, Paris, Tennessee	RR272-112	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The May 19, 1993 Dismissal Letter (Case No. RF272-87226) issued to Cicero School District 99 would be modified regarding the firm's application for refund submitted in the crude oil refund proceeding.
Aug. 19, 1993 .	Fletcher & Associates, Ltd., Enosburg Falls, Utah.	LEE-0051	Exception to the Reporting Requirements. If granted: Fletcher & Associates, Ltd. would not be required to file Form EIA-782B; "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Aug. 19, 1993 .	Joseph A. Camardo, Jr., Auburn, New York	LFA-0314	Appeal of an Information Request Denial. If granted: The July 19, 1993 Freedom of Information Request Denial issued by the Pittsburgh Naval Reactors Office would be rescinded, and Joseph A. Camardo, Jr. would receive access to a copy of various documents relating to the Bettis Atomic Power Laboratory, Westinghouse Electric Corporation.
Aug. 8, 1993 ...	Government Accountability Project, Washington, DC..	LFA-0312	Appeal of an Information Request Denial. If granted: The July 7, 1993 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and Government Accountability Project would receive access to information about certain activities of Martin Marietta Energy Systems and Oak Ridge Associated Universities at Oak Ridge National Laboratory.

Date received	Name of refund proceeding/name of refund application	Case No.
8/10/93	Market Street Texaco	RF321-19836
8/12/93	Denbe Corp.	RF349-5
8/16/93	Magnon South State Canal	RF346-66
8/16/93	Lydia Canal	RF346-67
8/16/93	St. Martinville Canal	RF346-68
8/16/93	Comeaux Seafood & Grocery	RF346-69
8/16/93	Delcambre Canal Station	RF346-70
8/16/93	Lydia Canal	RF346-71
8/16/93	Pelican Oil Co.	RF346-72
8/16/93	Al's Canal Station	RF346-73
8/17/93	Brister's Texaco Service Ctr	RF321-19837
8/17/93	Lumpkin Freeway Texas	RF321-19838
8/17/93	Erthall & Son Texaco	RF321-19839
8/13/93 thru 8/20/93	Atlantic Richfield Applications Received	RF304-14381 thru RF304-14406
8/13/93 thru 8/20/93	Crude Oil Refund Applications Received	RF272-94841 thru RF272-94869

[FR Doc. 93-25794 Filed 10-19-93; 8:45 am]
BILLING CODE 6450-01-P

Issuance of Decisions and Orders During the Week of June 7 Through June 11, 1993

During the week of June 7 through June 11, 1993 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

National Security Archive, 6/11/93, KFA-0280

The National Security Archive appealed a denial by the Director of the Office of Classification of a request for information that it filed pursuant to the Freedom of Information Act. The Director had determined that a document pertaining to Saudi Arabian defense should be withheld pursuant to Exemption 1 because it was classified. After reviewing the document on appeal, the DOE determined that some of it could now be declassified and released, while other portions must continue to be withheld as secret national security information. Accordingly, the Appeal was granted in part.

Refund Applications

J.D. Streett & Co., Inc., 6/9/93, RF272-67564

The DOE issued a Decision and Order denying the Application for Refund filed by J.D. Streett & Co. in the Subpart V crude oil refund proceeding. The Applicant had entered into a consent order under which it released all claims to a Subpart V refund. The DOE found that the terms of the Consent Order precluded the Applicant from receiving a refund in the crude oil refund proceeding.

Murphy Oil Corporation/ Stormy Oil Company, 6/9/93, RF309-1429

The DOE issued a Decision and Order rescinding a refund granted in the Murphy Oil Corporation special refund proceeding to Ronald Vukelich for Murphy product purchases made by Stormy Oil Company. It was determined that in May of 1981, Mr. Vukelich purchased only the assets of Stormy Oil Company from David and Rita Storms.

We concluded therefore that Mr. and Mrs. Storms, who continued to own all stock in the corporation when it was dissolved in 1981, were the rightful recipients of the Stormy Oil Company refund. Accordingly, the refund granted to Mr. Vukelich was rescinded and he was ordered to remit funds totalling $23 (comprised of $19 principal and $4 interest). In a separate decision, the Stormy Oil Company refund was granted to Mr. and Mrs. Storms.

Texaco Inc./Douglas E. Howie Marshall Hayes Distributorship, 6/9/93, RF321-5473, RF321-19538

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning two Applications for Refund. One was filed by Mary Hayes on behalf of a distributorship that she owned with her late husband. The other was filed by Douglas E. Howie who purchased the distributorship on July 1, 1980. Howie claimed a refund for the entire 1973 to 1981 refund period and supporting his claim. After being contacted by DOE, Mrs. Hayes stated that she had no idea that she might have a right to a substantial refund. She subsequently filed her own application. The DOE found that the affidavit should be given little weight because Mrs. Hayes signed it out of a desire to be helpful and without a full understanding of her rights. The DOE also found that the affidavit was contradicted by the terms of the sales contract which indicated that the sale should be narrowly construed. Accordingly, Mrs. Hayes was granted a refund for the period prior to July 1, 1980, and Howie was granted a refund for the period after that date.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

A.D. Schramm et al	RF272-92517	06/09/93
Athens Independent School Dist et al	RF272-81285	06/08/93
Atlantic Richfield Company/Albert F. Schroeder	RF304-13281	06/10/93
Atlantic Richfield Company/Art's ARCO	RR304-58	06/07/93
Atlantic Richfield Company/Daniel W. Currier et al	RF304-13859	06/09/93
Atlantic Richfield Company/Rudy & Son's, Inc	RF304-12071	06/07/93
Rudy's Car Wash & ARCO	RF304-12072	
Rudy's ARCO #1	RF304-12073	
Rudy's ARCO #2	RF304-12074	
Clark Oil & Refining Corp./Clark Super 100 of Winona	RF342-298	06/11/93
Ike's Super 100	RF342-307	
Abdul's Clark Service	RF342-318	
Clark Oil & Refining Corp./Hilemans Clark	RF342-174	06/11/93
Joseph Dunlap Super 100	RF342-213	
Edward Schelfo	RF342-222	
E. Vanderhoof & Sons	RC272-195	06/07/93
East Bridgewater School Dist	RF272-83359	06/07/93
City of Hialeah Gardens	RF272-83446	
City of Grand Rapids	RF272-83527	
Farmers Union Elevator	RF272-81889	06/08/93
Faylor-Middlecreek, Inc	RF272-29838	06/10/93
Faylor-Middlecreek, Inc	RD272-29838	
Gulf Oil Corporation/Center Point Gulf, Inc	RF300-16059	06/10/93
Gulf Oil Corporation/Craig's Gulf et al	RF300-18189	06/10/93
Gulf Oil Corporation/Homer's Gulf et al	RF300-15210	06/09/93
Gulf Oil Corporation/Max's Gulf Service	RF300-14673	06/07/93
Gulf Certified Car Care	RF300-15461	
Langley Gulf	RF300-15462	
OST Gulf	RF300-15463	
Gulf Oil Corporation/McPhail Gulf	RF300-21741	06/10/93
Gulf Oil Corporation/Reish Gulf	RF300-18214	06/10/93
Gulf Oil Corporation/Riverside Linen Supply	RF300-21743	06/10/93
Gulf Oil Corporation/Roy Krimper Gulf et al	RF300-13050	06/07/93
Holsum Bakery, Inc	RC272-200	06/11/93
J.C. Baldridge Lumber Co. et al	RF272-65872	06/11/93
Marquette Transportation Co., Inc	RF272-15755	06/07/93
Marquette Transportation Co., Inc	RD272-15755	
Metropolitan Petroleum & Fuel/Waldo Garcia	RF349-1	06/10/93
Mount Carmel Cemetery Assoc. et al	RF272-92404	06/10/93
Perry Oil Company et al	RF272-90166	06/11/93
Shaver Transportation Co	RC272-199	06/09/93
Shell Oil Company/Conover Shell & Pantry	RF315-4835	06/09/93
Heffner's Shell Service	RF315-7442	
Bird & Son, Inc.	RF315-10200	
Shell Oil Company/Onslow Oil Company	RF315-724	06/10/93
Martin Oil Company	RF315-725	
Texaco Inc./Lacey-Hollis, Inc	RF321-14321	06/11/93
B.T. Hollis	RF321-14322	
Lacey & Lacey	RF321-14323	
Texaco Inc./Link's Texaco	RF321-19758	06/07/93
Texaco Inc./Nolte's Interstate Texaco et al	RF321-2708	06/10/93
Texaco Inc./Strickland Transportation Co., Inc. et al	RF321-14534	06/11/93
Texaco Inc./The Valley Line Co	RF321-3021	06/10/93
Boise Cascade Corp	RF321-3103	
Western Trucking	RC272-201	06/10/93

Dismissals

The following submissions were dismissed:

Name	Case No.
Ackley-Geneva Community School	RF272-87406
Beattiesford Road Gulf	RF300-21587
Cal Brekke	LFA-0301
Dickison Fuel & Distributing Company	RF304-3350
Eaton City School District	RF272-81210
Gerald Alexander	RF321-4417
Hamburg Quarry, Inc	RF300-19325
Hamilton Elementary #3	RF272-87078
Herman's Gulf Service	RF300-20935
John P. Lohrenz	LFA-0298
Lago Vista ISD	RF272-81478
Leroy Community Unit School District	RF272-81349
Lexington C.U. School District 7	RF272-81332
Marcellus Central School	RF272-83599
Oregon State Board of Higher Education	RF272-79083
Page Unified School District #8	RF272-81211
Romarco Corp.	RF300-19343
Salt Creek School District 48	RF272-87433
Sparland Community Unit School District 3	RF272-81496
Tom's Gulf Service	RF300-13525
Tonasket School District	RF272-87362
Top-Notch Texaco	RF321-11094
Trade Services, Inc	RF300-14525
Western Wayne Schools	RF272-87304
Wethersfield C.U.S.D. 230	RF272-87308
Williamsfield C.U.S.D. 210	RF272-87314

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forestall Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: October 14, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93-25793 Filed 10-19-93; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4791-9]

Standards of Performance for Asbestos National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to the Commonwealth of Virginia

AGENCY: Environmental Protection Agency.

ACTION: Informational notice re: delegation of authority.

SUMMARY: By letter of July 15, 1993, EPA Region III delegated to the Commonwealth of Virginia, Department of Labor and Industry (DLI) the authority to implement and enforce provisions of the National Emission Standard for Hazardous Air Pollutants (NESHAP) for Asbestos, including revisions to the Asbestos NESHAP regulations promulgated on November 20, 1990. This approval was granted after EPA review of a request from the Virginia DLI for such authority.

EFFECTIVE DATE: July 15, 1993.

ADDRESSES: Comments may be submitted to Thomas J. Maslany, Director, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this section are available for public inspection during normal business hours at the above address; or, at the Virginia Department of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, Virginia 23219.

SUPPLEMENTARY INFORMATION: By previous **Federal Register** Notice (FRN) dated August 27, 1981, EPA Region III announced the delegation of enforcement authority for all NSPS and NESHAP categories to the Commonwealth of Virginia State Air Pollution Control Board (SAPCB). In addition, that FRN also announced that all future revisions to NSPS and NESHAP regulations would be automatically delegated to the SAPCB, subject to certain conditions. By letter dated October 28, 1992 to the Virginia Department of Air Pollution Control (DAPC), EPA confirmed the continuing authority of the SAPCB and DAPC to implement and enforce the November 20, 1990 revisions to the asbestos NESHAP regulations.

On September 1, 1992, the Virginia Department of Labor and Industry (DLI) submitted documentation to EPA Region III and requested delegation of authority to implement and enforce the asbestos NESHAP regulations for major source categories within Virginia, in conjunction with the DAPC (since reorganized as part of the newly created Virginia Department of Environmental Quality (DEQ)). Included with that request were copies of the Virginia Asbestos NESHAP Act which became effective July 1, 1992, the Virginia "Regulation for Asbestos Emissions Standards for Demolition and Renovation Construction Activities and the Disposal of Asbestos Containing Construction Wastes; Final Rule" which was adopted on August 25, 1992 by the Virginia Occupational Safety and Health Codes Board, and is identical to the EPA asbestos NESHAP for renovation and demolition operations; and a Virginia DLI Program Directive outlining DLI policies and procedures for scheduling of inspections and taking enforcement actions.

After a thorough review of the documentation submitted, including a

review of the administrative and legal capabilities of the DLI, EPA Region III approved DLI's request for delegation in a letter dated July 15, 1993, subject to the terms and conditions stated therein. EPA retains concurrent Asbestos NESHAP enforcement authority in Virginia, which it may exercise whenever the Agency deems federal enforcement necessary to achieve the objectives of the Clean Air Act.

Effective immediately, copies of notifications required pursuant to 40 CFR 61.145(b) for asbestos demolition and renovation projects to be conducted within the Commonwealth of Virginia shall be submitted to the Virginia Department of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, Virginia 23219. Separate copies of such notifications need not be submitted to the EPA Regional Office.

Authority: This notice is issued under the authority of sections 111 and 112 of the Clean Air Act.

Dated: September 13, 1993.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 93–25760 Filed 10–19–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4785–6]

HON/RACT Interface Draft Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Draft guidance for public comment.

SUMMARY: This draft guidance describes an option that States can consider in implementing Reasonably Available Control Technology (RACT) under the Clean Air Act. Specifically, the guidance describes what the EPA is calling "presumptive alternative RACT" (PAR) for emission points that are both affected by the Hazardous Organic NESHAP (HON) and subject to the implementation of RACT.

The control strategies used by source owners and operators to comply with the HON can vary. In the absence of PAR, the implementation of RACT could create a disincentive to some of the strategies allowed for HON compliance. This draft guidance is intended to minimize constraints to flexibility with complying with the HON that may be created by the implementation of RACT, while at the same time attempting not to jeopardize the emission reductions that would be achieved by RACT implementation.

FOR FURTHER INFORMATION CONTACT: Mark Morris (telephone: 919–541–5416), Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711.

SUPPLEMENTARY INFORMATION: Title I of the Clean Air Act, as amended in 1990 (Act), contains provisions for the attainment of the National Ambient Air Quality Standards (NAAQS) for ozone and other criteria pollutants. Section 182(b)(2) of the Act requires that State implementation plans (SIP's) for certain ozone nonattainment areas be revised to require the implementation of RACT for control of volatile organic compound (VOC) emissions from sources for which the EPA published pre-enactment control techniques guidelines (CTG's), or for which the EPA will publish a CTG between the date of enactment of the 1990 Clean Air Act Amendments (1990 Amendments) and the date an area achieves attainment status. Section 182(b)(2) of the Act also requires the implementation of RACT for control of VOC emissions from major stationary sources not covered by a CTG.

The EPA has defined RACT generally as: the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761). RACT for a particular source is determined by the State on a case-by-case basis, considering the technological and economic circumstances of the individual source. Further information on CTG's and the definition of RACT can be found in the Federal Register notice cited above.

Prior to amendment of the Act, the EPA had published 27 CTG's. Each CTG describes techniques available for reducing emissions of VOC from one or more categories of sources. The primary purpose of each CTG is to inform the State and local air pollution control agencies of the control techniques available for the class of sources covered by the CTG. In addition to information on control techniques, each CTG contains recommendations to the States of what the EPA calls the "presumptive norm" for RACT, based on the EPA's evaluation of the capabilities and problems general to the industry. This means that if the State requires the control recommended in the CTG, then the EPA will approve such a requirement as meeting RACT for a source. On the other hand, if the State makes a RACT determination that is less stringent than the EPA presumptive norm, then a technological and economic feasibility analysis must be performed to justify deviation from the presumptive norm. Section 183(a) of the Act requires that CTG's be issued for thirteen additional categories of stationary sources of VOC emissions within three years of enactment of the 1990 Amendments.

Section 112 of the Act requires that emission standards be promulgated for categories and subcategories of major sources of hazardous air pollutants (HAP's) and such area sources as the Administrator finds warrant regulation. One hundred eighty-nine pollutants are listed as HAP's, many of which are also VOC's. Consequently, standards promulgated under section 112 will affect some of the same emission sources that will be regulated under section 182(b)(2). The HON is one such regulation to be promulgated under Section 112.

The proposed HON rule was published in the Federal Register on December 31, 1992 (57 FR 62608). Since the HON has not been promulgated, it may be revised in response to comments received from the public. These revisions could include changes in the emissions averaging provisions, which would likely necessitate revision of today's draft guidance.

The proposed HON includes provisions for process vents, transfer operations, storage vessels, wastewater operations, and equipment leaks associated with the manufacture of synthetic organic chemicals. The following CTG's have already been issued and address some of the same emission points as the proposed HON: (1) The Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Processes CTG (December 1984); and (2) the SOCMI Fugitive Emissions CTG (March 1984). The EPA anticipates issuing other CTG's under section 183(a) which will address other HON emission points, including: (1) The SOCMI Reactor Processes and Distillation Operations Processes CTG, which was published in draft form for public comment in December, 1991 (56 FR 64785); (2) the Volatile Organic Liquid (VOL) Storage CTG; and (3) the Industrial Wastewater CTG. Drafts of the latter two are under development and expected to be published for public comment soon.

As discussed earlier, the implementation of RACT is required not only for those sources for which a CTG has been, or will be, issued but is also required for all other major stationary sources of VOC emissions. Today's notice contains draft guidance to States on the interface between the HON and both CTG RACT rules and non-CTG RACT rules for major sources. However, since CTG's have been issued, or will be issued, for the sources affected by the

HON (except for transfer operations), the emphasis in this notice will be on the interface between the HON and the RACT rules developed in accordance with the applicable CTG's.

The regulatory framework contained in the proposed HON and the RACT requirement, as interpreted in the CTG's, has two main components. First, it contains applicability criteria, which are criteria used to determine which emission points will be required to reduce their emissions. Second, the HON and the CTG's contain descriptions of the control technologies and/or control technology performance required (or recommended, in the case of CTG's) at the emission points that meet the applicability criteria. For example, the storage vessel provisions for fixed roof tanks in the HON may have applicability criteria of 40,000 gallons and 0.1 psia. This means that all tanks that have capacities greater than or equal to 40,000 gallons and that store liquids with HAP partial pressures greater than or equal to 0.1 psia would be required to be controlled. The control requirements of the HON could be met by the installation of reference control technologies.

Reference control technologies are defined simply as those air pollution control devices which may be used to satisfy the control technology requirements of the HON. In subpart G of the proposed HON rule (57 FR 62608), reference control technologies are specified for each kind of emission point and control efficiencies are established that each device should achieve when being used to comply with the HON. The HON reference control technologies are identical to the control technologies and/or control technology performance recommended in the CTG's for the same emission points.

In the proposed HON, emission points that meet the applicability criteria are called Group 1 points. Emission points that emit HAP's but are not Group 1 points are called Group 2 points. For example, using the applicability criteria above, a 50,000 gallon tank which stores a liquid with a HAP partial pressure of 1 psia would be a Group 1 emission point. A 50,000 gallon tank which stores a liquid with a vapor pressure of 0.05 psia would be a Group 2 emission point. The terms Group 1 and Group 2 are not used in the CTG's when referring to emission points. For the purpose of discussion within this notice, however, emission points that meet the applicability criteria in the CTG will be referred to as Group 1 CTG points. Emission points that are not Group 1 CTG points will be referred to as Group 2 CTG points.

Owners and operators of sources affected by the HON are required to reduce their HAP emissions to a specified "allowable" level. This allowable level of HAP emissions is calculated by adding all Group 2 HON point emissions to the emissions from all Group 1 HON points that would continue to be emitted after the application of the reference control technologies. Compliance with the HON (i.e., achieving the allowable level of HAP emissions) can be achieved either by applying the reference control technologies to all Group 1 HON points, by employing emissions averaging, or by a combination of the two.

Emissions averaging would allow some Group 1 HON points to remain uncontrolled (or undercontrolled) if the requisite emissions reductions are "made up" at other points. Emissions averaging in the HON consists of generating HAP emissions "credits" at some points to offset HAP emissions "debits" at other points. Credits can be generated by reducing HAP emissions at Group 2 HON points (since these points are not required to reduce their HAP emissions) or by reducing HAP emissions at Group 1 HON points beyond the reference control level. Debits are created when Group 1 HON points are left uncontrolled, or are controlled to a level below the reference control level.

The emission points included in a HON emissions average are chosen by the plant owner or operator. Group 1 points to which the reference control technologies are applied are neither credit nor debit generators; Group 2 HON points that are left uncontrolled are not debit generators, since they are not required to be controlled. Since the emission points described above are neither credit nor debit generators, they would not be included in HON emissions averaging; these points contribute to achieving the allowable HAP emission level by the application of reference control technologies where applicable (i.e., "point-by-point" application of controls). The emission points included in a HON emissions average contribute to achieving the allowable HAP emission level by generating enough HAP emissions credits to offset HAP emissions debits. More detail on credits and debits can be found in the proposed HON rule (57 FR 62744).

As previously mentioned, CTG's address some of the same emission points as the HON. Because sources may be subject to both the HON and the RACT rules developed by States, in some instances there may be control requirements from both rules for the same emission points. In these instances, the owner or operator of the source would traditionally be required to meet the more stringent of the two control requirements.

As explained above, an owner or operator can avoid the control requirements for some Group 1 HON points if emissions averaging is used to make up the requisite emissions reductions. However, the specific emission point that an owner or operator might wish to leave uncontrolled as part of a HON emissions average could still be subject to a RACT control requirement because of its VOC emissions. As a result, RACT rules could constrain the flexibility provided by HON emissions averaging. Because of this, the EPA began examining options to minimize constraints to flexibility with meeting the HON, while at the same time attempting not to jeopardize the VOC emission reductions that would be achieved by installing controls at Group 1 CTG points.

The first option considered by the EPA was to exempt from the CTG's all emission points that are affected by the HON. Emission points that are affected by the HON do not necessarily have to be controlled, but may have to meet other requirements in the regulation, such as reporting and recordkeeping. In other words, HON-affected emission points include those points that are either Group 1 or Group 2 for the HON, but not those that have no HAP emissions. This option of exemption would be acceptable if there were some way to ensure that all Group 1 CTG emission points achieved VOC reductions by the installation of controls at all Group 1 HON points. However, the possibility exists where a Group 2 HON emission point could be Group 1 for the CTG, and compliance with the HON for this point would not require the installation of controls. Therefore, this emission point would achieve no VOC reductions by complying with the HON. Even if the emission point were Group 1 for both the HON and the CTG, if the point emitted only a small amount of HAP's, it could be easily "averaged out" using emissions averaging in the HON. Again, this emission point would remain uncontrolled and no VOC reductions would be achieved. Finally, compliance with the HON may be achieved by the replacement of a HAP/VOC with a non-HAP VOC. Since no HAP's would be emitted after the replacement, compliance with the HON is achieved. However, no VOC reductions occur. For the reasons given above, the option of exempting the HON

points from the CTG's was considered unacceptable.

Another option considered was to allow VOC emissions trading. Under this option, some Group 1 CTG points could remain uncontrolled if VOC reductions are achieved elsewhere at the facility. For example, if HON emissions averaging is used to "average out" an emission point that is Group 1 for the CTG, this point may still remain uncontrolled if sufficient VOC reductions are achieved at other points. Such VOC emissions trading is currently allowed under certain conditions in the proposed Economic Incentive Program (EIP) rules (58 FR 11110).

EIP's are programs that States may choose to adopt in order to increase the flexibility and lower the cost of attaining and maintaining the NAAQS. Programs could include strategies such as emission fees, marketable permits, emissions trading, etc. VOC emissions trading under EIP's is an acceptable option for minimizing the constraints to HON compliance strategies that were discussed earlier.

The proposed EIP rules are general in nature due to the variety of EIP designs which may be submitted to the EPA for approval as part of a SIP. Today's guidance is intended to provide the States with a specific alternative to traditional point-by-point RACT compliance, namely VOC emissions averaging. Provisions for VOC emissions averaging among HON-affected points, which is the final option to be discussed, can be included in a State's RACT rule. If such provisions of a State's RACT rule comply with today's guidance, then they will be approvable as meeting RACT by the EPA. Such provisions could also be included in a State's EIP.

The final option considered was to recommend a presumptive alternative RACT (PAR) for emission points affected by both the HON and RACT rules. Similar to the HON requirement, PAR is met if the VOC emissions from the HON-affected points are reduced to a specified allowable level. This allowable level of VOC emissions is determined using the same methodology used in the proposed HON to calculate the allowable HAP emission level, except that VOC emissions from the CTG points are used in the calculation. In other words, the allowable VOC emission level for the HON-affected points is calculated by adding all Group 2 CTG point VOC emissions to the VOC emissions from all Group 1 CTG points that would continue to be emitted after the application of the CTG-recommended control technologies.

PAR is an alternative RACT in that it allows for VOC emission reduction strategies other than the point-by-point application of the controls recommended in the CTG's. PAR is presumptive in that if a State requires the alternative RACT as described in this guidance, then the EPA will approve such a requirement as meeting RACT for the HON-affected emission points at a plant without the State providing an economic or technological feasibility analysis.

As discussed earlier, the control strategy used to achieve the allowable HAP emission level is chosen by the plant owner or operator. These strategies may consist of a combination of point-by-point application of controls at some points and emissions averaging at other points. Regardless of the control strategy chosen for HON compliance, PAR is met if the VOC emissions from the HON-affected points are reduced to the allowable level.

If HON reference control technologies are applied at an emission point that is affected by a CTG, then this point is automatically meeting PAR, since the HON reference control technologies and the CTG-recommended technologies are identical. No demonstration of sufficient VOC emission reduction needs to be made, since the actual VOC emissions from this controlled point will always be equal to the allowable VOC emissions. However, if the emission point were Group 2 for the CTG, then the owner or operator may wish to use the VOC reductions achieved by the controls as credits to offset VOC emission debits at other HON-affected Group 1 CTG points. In this case, the VOC reductions from this point would be included in a calculation to ensure that the VOC credits outweigh the VOC debits. The calculation procedures used to estimate the emissions from HON points and the procedures used to average such emissions are contained in the proposed HON rule (57 FR 62744). These same procedures are to be used to calculate and average VOC emissions under PAR.

If a HON control strategy does not reduce the VOC emissions from the HON-affected points to the allowable level, then additional reductions would be necessary to achieve this level. These additional reductions could be obtained by reducing VOC emissions further at one or more of the HON-affected points. The reductions also could be obtained by reducing VOC emissions from Group 2 CTG points that are not affected by the HON. Reductions achieved at Group 1 CTG points that are not affected by the HON could not be used, unless the VOC emissions from these points are reduced beyond the level recommended by the CTG (e.g., by installing controls that are more effective than the recommended control technologies).

As explained earlier, the VOC reductions necessary to meet PAR are determined by theoretically applying the CTG-recommended control technologies to the Group 1 CTG points. However, a CTG has not been (and is not expected to be) issued for transfer operations. Therefore EPA would consider that PAR is met with no emission reductions from transfer operations. It should be noted that emissions from transfer operations are usually small compared to those from the other emission points.

It is important to note that equipment leak emissions are not included in emissions averaging in the proposed HON. The reasons for their exclusion are given in the preamble to the proposed HON rule. One of the reasons is that there is no fixed performance level in the equipment leaks standard in the HON; therefore, there would be no way to determine what level of emissions is "allowable". For the same reasons that equipment leak emissions are not included in HON emissions averaging, the EPA is proposing that these emissions not be included in the averaging under PAR.

Whether compliance with the HON is achieved by installing the reference control technologies at Group 1 HON points or by employing emissions averaging, all monitoring, reporting, and recordkeeping (MRR) requirements for emission points that meet PAR will be met if the HON MRR requirements are met for the same points. In this way, there will be no duplicative MRR requirements.

To this point, there has been no mention of the period of time within which a source must maintain its VOC emissions at or below the allowable level in order to meet PAR. When averaging emissions under the HON, a source must demonstrate that its actual HAP emissions are at or below the allowable HAP emission level on a annual basis. In addition to this demonstration, the source must demonstrate that it has not exceeded specified emission levels on a quarterly basis. Since the VOC "averaging" allowed under PAR is intended to be identical to the HAP averaging under the HON, the same demonstrations would have to be made for the VOC emissions. However, the purpose of VOC RACT rules is to reduce VOC emissions from sources located within ozone nonattainment areas so that these areas can achieve attainment status. Since the ozone NAAQS is a short-term

standard, a 24-hour averaging time is typically used to construct attainment demonstrations. To resolve the difference between averaging times, the EPA is proposing that the annual averaging time be used as long as sources can make a statistical showing that the longer averaging time will not interfere with demonstrations of reasonable further progress (RFP) and the attainment of short-term NAAQS. Since the HON affects mostly continuous processes, there should be little difficulty in demonstrating that emissions averaged on a annual basis are equivalent to those averaged on a daily basis. Guidance on making the equivalency demonstration between 24-hour averaging and longer-term averaging is currently being developed.

With the incorporation of PAR, the EPA is proposing that the Agency will approve a State's RACT determination if it meets one or more of the following emission reduction programs:

(1) The traditional presumptive RACT. The State requires that each Group 1 CTG point apply the control technology recommended in the CTG;

(2) PAR. The State requires that HON-affected points, after complying with the HON, also achieve, in the aggregate, VOC reductions sufficient to achieve the allowable VOC level. PAR can be applied whether compliance with the HON is achieved by applying reference control technologies at each HON Group 1 emission point, or by employing emissions averaging. If VOC reductions resulting from HON compliance are insufficient to achieve the allowable level, then additional reductions would be necessary to meet the requirement; or

(3) A case-by-case alternative RACT determination. The State requires emission reduction technology less stringent than that recommended in the CTG. In such instances of case-by-case RACT determinations, the State must complete a technological and economic feasibility analysis.

The State could also allow VOC averaging, such as described under PAR, and use their alternative technologies and applicability criteria as the basis for determining the necessary VOC reductions. If a State allows an emissions averaging program that does not comply with this guidance, then the State must submit the provision as an economic incentive program and meet the requirements outlined in the EIP rules.

A State could use any combination of the above options within one plant. For example, one part of a plant that emits no HAP's could apply option one or three at each emission point; another part of the plant that must comply with the HON could use the second option to comply with the RACT requirement.

Examples of the PAR are given below for several hypothetical chemical plants. As discussed above, there are several options available for an approvable RACT determination. Although each of these options could be used in the examples that follow, the examples are intended primarily to explain PAR.

It is important to note that the explanation given above of HON emissions averaging, though accurate, has been somewhat simplified. Omitted from the explanation was a description of discount factors. Reductions of HAP's made at certain emission points to avoid the control requirements at other points may be "discounted" by some factor to ensure that the environment does not suffer from the allowance of emissions averaging. As an example, if the discount factor were 0%, then a plant could avoid the control requirements on a one ton emission point by reducing emissions at other points by one ton. If the discount factor were 20%, then 1.2 tons of reductions would be necessary to avoid the control requirements at the one ton point. The proposed HON does not specify an exact figure for the discount factor but seeks comment on a factor in the range of 0% to 20%. Since no exact figure has been specified, and to keep the examples that follow as simple as possible, the discount factor is assumed to be zero.

The plant for the first example is shown in Figure 1. This plant consists of a Group 1 HON tank, Group 2 HON tank, Group 1 HON vent, Group 2 HON vent, and some Group 1 and Group 2 CTG emission points that are not affected by the HON. The Group 1 and Group 2 HON points are also Group 1 and Group 2 for the CTG, respectively. The HON-affected emission points in this example emit HAP/VOC, that is, HAP's which are also VOC's; the emission points that are not affected by the HON are those that emit only VOC's. In this example, the plant decides to comply with the HON by applying reference control technologies to all Group 1 HON points. Since these points apply the controls required by the HON, they are also meeting PAR.

In Example 1, the Group 2 HON points are also Group 2 for the CTG, and are not required to be controlled. The emission points at this plant that are not affected by the HON are required to meet whatever regulatory requirements apply to them.

The plant in the first example also will be used for the second example (Figure 2). In this example, the plant decides to comply with the HON by using a combination of point-by-point application of controls and emissions averaging. The chosen control strategy is to apply HON reference control technologies to the vents and leave the tanks uncontrolled. The allowable HAP emission level is 8.25 tons per year. The Group 2 HON tank and the Group 1 HON vent contribute to achieving the allowable HAP emission level by the point-by-point application of controls and are not included in HON emissions averaging because they are neither credit nor debit generators. The Group 1 HON tank is a debit generator, since it is left uncontrolled; the amount of the debit is 2.85 tons per year. The Group 2 HON vent is a credit generator; the amount of the credit is 2.94 tons per year. Since the HAP emission credit is greater than the HAP emission debit, this plant is in compliance with the HON.

Since the Group 1 HON points and Group 2 HON points are Group 1 and Group 2 for the CTG, respectively, and since all emissions from these points are HAP/VOC, the allowable level of VOC emissions is the same as the allowable HAP level, or 8.25 tons per year. Consequently, the HON-affected points are also meeting PAR with the chosen control strategy. As in Example 1, the emission points outside the HON-affected "source" are required to meet any applicable regulatory requirements.

The plant for the third example is shown in Figure 3. This plant is identical to those in the first two examples, except that the Group 2 HON tank is now Group 1 for the CTG. Where before this tank emitted five tons of a HAP that was also a VOC, in this example the tank emits only half a ton of HAP and 4.5 tons of non-HAP VOC. The plant decides to comply with the HON by applying reference control technologies to the Group 1 HON points. Since these points apply the controls required by the HON, they are also considered to be meeting PAR. The Group 2 vent can remain uncontrolled, since it is Group 2 for both the HON and the CTG. The Group 2 HON tank, however, must apply RACT controls since it is Group 1 for the CTG. Again, the effect of regulations on the emission points outside the HON-affected source is the same as in the previous examples.

In the fourth example (Figure 4) the plant used is identical to the one in Example 3. The plant decides to comply with the HON using a combination of point-by-point application of controls and emissions averaging. The chosen control strategy is to apply reference control technologies to the vents and leave the tanks uncontrolled. The plant is allowed to emit five percent of its Group 1 tank emissions, two percent of

its Group 1 vent emissions, and all of its Group 2 point emissions. So, the allowed HAP emissions are 3.75 tons per year. Although the allowable HAP emissions from this plant are not the same as the allowable HAP emissions from the plant in Example 2, the explanation of how this plant achieves the allowable HAP emission level is identical to the explanation given in that example.

The allowable VOC emission level is 3.5 tons per year. The Group 1 CTG vent contributes to achieving the allowable VOC emission level by the point-by-point application of controls and is not included in the VOC emissions averaging because it is neither a credit nor a debit generator. In this example, both tanks are debit generators since they are Group 1 for the CTG and are left uncontrolled; the VOC emission debits are 7.6 tons per year. The Group 2 CTG vent is a credit generator; the amount of the credit is 2.94 tons per year. Since there are not enough VOC emission credits to offset the debits, the chosen control strategy does not reduce VOC emissions to the allowable level, and 4.66 tons per year of VOC reductions must be achieved from other points. These VOC reductions could be obtained by controlling the HON-affected Group 1 CTG tank, or by controlling a Group 2 CTG point that is outside the HON-affected source. The reductions also could be obtained by controlling a Group 1 CTG point outside the HON-affected source to a level beyond that required by the CTG.

The purpose of this notice is to seek comment on guidance for emission points that are affected by both the HON and RACT rules. The rationale for recommending the PAR in this guidance is that, although applicability criteria may differ between the HON and CTG's, the control technologies recommended in the CTG's and required by the HON are the same. Therefore, if HON compliance is achieved by applying controls at all Group 1 HON points, these points would achieve VOC reductions equal to those that would be achieved by the application of the CTG-recommended controls. In the cases where emissions averaging is used to comply with the HON, the requirement of reductions in VOC emissions to a specified level prevents sacrificing any VOC reductions that normally would be achieved. In the event that a State's RACT rule contains control requirements that are more stringent than those in the CTG, PAR may not be an acceptable option. Nothing prevents States from requiring technology that is more stringent than the CTG-recommended controls. However, the EPA encourages States to allow PAR as an option to remove the disincentive to HON compliance.

As mentioned previously, today's notice contains guidance only for the interface between the HON and RACT rules. EPA is considering developing similar guidance for future CTG's where the source category is also being addressed by Section 112 rules. Comment is welcomed regarding similar guidance for the interface between future CTG's and Section 112 rules for categories such as Batch Processes, Aerospace, Shipbuilding and Repair, and Wood Furniture. There will be other opportunities for interested parties to comment as these CTG's and Section 112 rules are being developed.

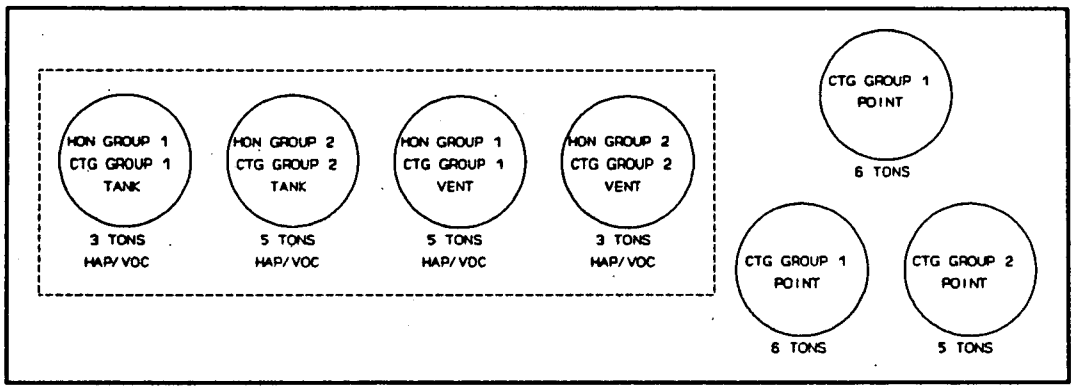
Dated: October 11, 1993.

Michael Shapiro,

Assistant Administrator for Air and Radiation.

BILLING CODE 6560-50-P

Figure 1: PAR Example 1.



THIS PLANT DECIDES TO COMPLY WITH THE HON BY INSTALLING THE REFERENCE CONTROL TECHNOLOGIES AT ALL GROUP 1 HON POINTS.

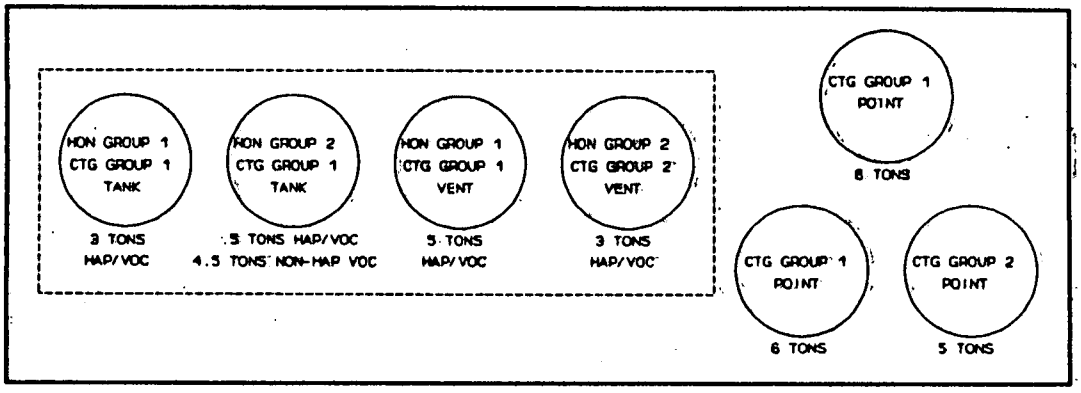
SINCE THE GROUP 1 HON POINTS INSTALL THE REQUIRED CONTROLS, THESE POINTS ARE ALSO CONSIDERED TO BE MEETING PAR.

SINCE THE GROUP 2 HON TANK AND VENT ARE GROUP 2 FOR THE CTG, THESE POINTS ARE NOT REQUIRED TO REDUCE THEIR EMISSIONS.

THE EMISSION POINTS THAT ARE NOT AFFECTED BY THE HON ARE REQUIRED TO MEET ANY APPLICABLE REGULATORY REQUIREMENTS.

COINCIDENTALLY, THE HON CONTROLS ARE IDENTICAL TO THE CTG CONTROLS FOR TANKS AND VENTS; THEREFORE, THIS PLANT IS ACTUALLY MEETING THE CTG "PRESUMPTIVE NORM" FOR RACT.

Figure 2: PAR Example 2.



THIS PLANT DECIDES TO COMPLY WITH THE HON USING A COMBINATION OF POINT-BY-POINT APPLICATION OF CONTROLS AND EMISSIONS AVERAGING. ACCORDING TO THE HON, THE PLANT IS ALLOWED TO EMIT:

$E_{ALLOWED\ HAP}$ = (.02)(GROUP 1 VENT HAP EMISSIONS) + GROUP 2 VENT HAP EMISSIONS + (.05)(GROUP 1 TANK HAP EMISSIONS) + GROUP 2 TANK HAP EMISSIONS

= (.02)(5 TPY) + 3 TPY + (.05)(3 TPY) + 5 TPY = 8.25 TPY.

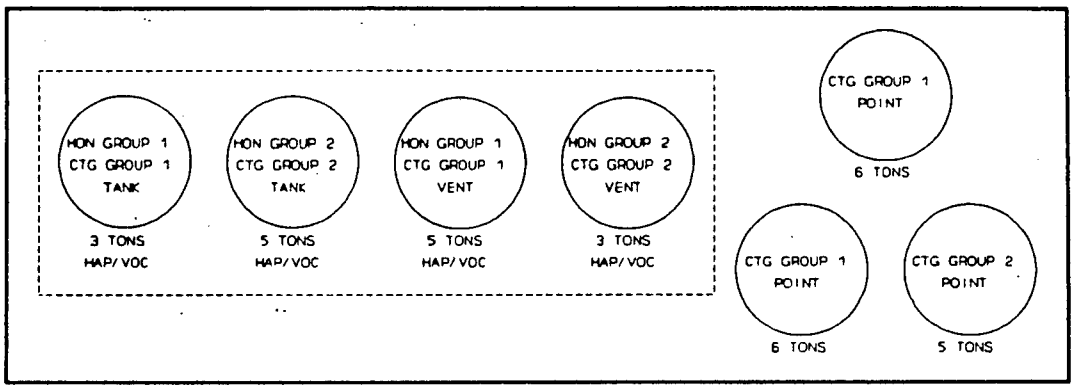
CONTROL STRATEGY: CONTROL BOTH VENTS TO 98% AND LEAVE THE TANKS UNCONTROLLED.

GROUP 2 HON TANK AND GROUP 1 HON VENT COMPLY POINT-BY-POINT.

GROUP 1 HON TANK AND GROUP 2 HON VENT ARE EMISSIONS AVERAGED:
DEBITS = (.95)(GROUP 1 HON TANK HAP EMISSIONS) = (.95)(3 TPY) = 2.85 TPY
CREDITS = (.98)(GROUP 2 HON VENT HAP EMISSIONS) = (.98)(3 TPY) = 2.94 TPY

SINCE HAP EMISSION CREDITS > HAP EMISSION DEBITS, THE PLANT IS IN COMPLIANCE WITH THE HON. SINCE ALL EMISSIONS FROM THE HON-AFFECTED POINTS ARE HAP/VOC, THESE POINTS ALSO MEET PAR (THE VOC EMISSION CALCULATIONS ARE THE SAME AS THE HAP CALCULATIONS ABOVE). AS IN THE PREVIOUS EXAMPLE, THE VOC POINTS THAT ARE NOT AFFECTED BY THE HON HAVE TO MEET ANY APPLICABLE REGULATORY REQUIREMENTS.

Figure 3: PAR Example 3.



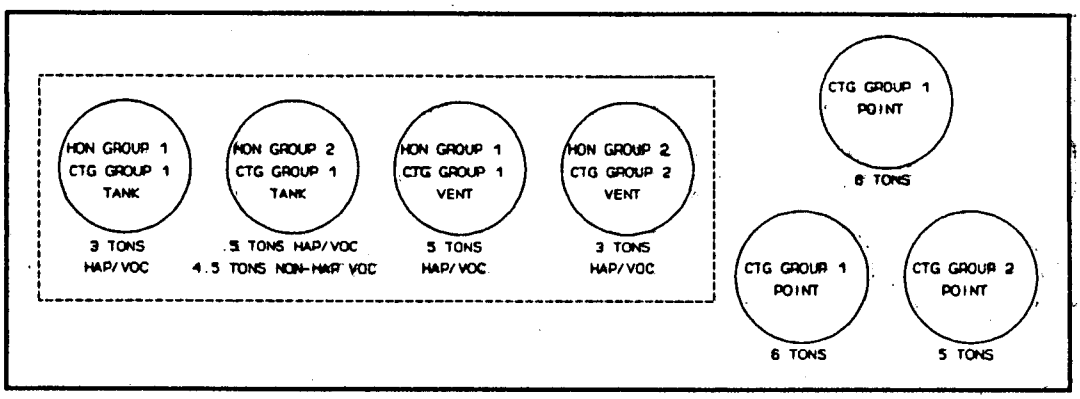
THIS PLANT DECIDES TO COMPLY WITH THE HON BY INSTALLING THE REFERENCE CONTROL TECHNOLOGIES AT ALL GROUP 1 HON POINTS.

SINCE THE GROUP 1 HON POINTS INSTALL THE REQUIRED CONTROLS, THESE POINTS ARE ALSO CONSIDERED TO BE MEETING PAR.

THE GROUP 2 HON TANK IS NOT REQUIRED TO REDUCE ITS EMISSIONS BECAUSE OF THE HON, BUT IT MUST INSTALL RACT CONTROLS SINCE IT IS GROUP 1 FOR THE CTG. THE GROUP 2 HON VENT IS ALSO GROUP 2 FOR THE CTG AND, THEREFORE, REQUIRES NO CONTROL.

THE EFFECT OF REGULATIONS ON THE EMISSION POINTS OUTSIDE THE HON-AFFECTED SOURCE IS THE SAME AS IN THE PREVIOUS EXAMPLES.

Figure 4: PAR Example 4.



THIS PLANT DECIDES TO COMPLY WITH THE HON USING A COMBINATION OF POINT-BY-POINT APPLICATION OF CONTROLS AND EMISSIONS AVERAGING. ACCORDING TO THE HON, THE PLANT IS ALLOWED TO EMIT:

$E_{ALLOWED\ HAP}$ = (.02)(GROUP 1 HON VENT HAP EMISSIONS) + GROUP 2 HON VENT HAP EMISSIONS + (.05)(GROUP 1 HON TANK HAP EMISSIONS) + GROUP 2 HON TANK HAP EMISSIONS

= (.02)(5 TPY) + 3 TPY + (.05)(3 TPY) + .5 TPY = 3.75 TPY.

THE PLANT WILL CONTROL BOTH VENTS TO 98%. THIS PLANT ACHIEVES THE ALLOWABLE HAP EMISSION LEVEL AS IN EXAMPLE 2.

THE VOC EMISSIONS ALLOWED TO BE EMITTED FROM THE HON-AFFECTED POINTS ARE:

$E_{ALLOWED\ VOC}$ = (.02)(GROUP 1 CTG VENT VOC EMISSIONS) + GROUP 2 CTG VENT VOC EMISSIONS + (.05)(GROUP 1 CTG TANK VOC EMISSIONS)

= (.02)(5 TPY) + 3 TPY + (.05)(3 TPY + 5 TPY) = 3.5 TPY.

THE GROUP 1 CTG VENT COMPLIES POINT-BY-POINT, SINCE THE HON REFERENCE CONTROL TECHNOLOGIES ARE APPLIED.

THE VOC EMISSIONS FROM THE TANKS AND THE GROUP 2 CTG VENT ARE TO BE AVERAGED:

DEBITS = (.95)(GROUP 1 CTG TANK VOC EMISSIONS) = (.95)(8 TPY) = 7.6 TPY
CREDITS = (.98)(GROUP 2 CTG VENT VOC EMISSIONS) = (.98)(3 TPY) = 2.94 TPY

THE VOC CREDITS DO NOT OUTWEIGH THE VOC DEBITS, AND 4.66 TPY OF VOC REDUCTIONS ARE NEEDED TO ACHIEVE THE ALLOWABLE VOC EMISSION LEVEL. THESE REDUCTIONS CAN BE OBTAINED BY CONTROLLING THE 5 TPY GROUP 1 CTG TANK WITHIN THE HON-AFFECTED SOURCE, OR BY CONTROLLING A GROUP 2 CTG POINT OUTSIDE THE HON-AFFECTED SOURCE.

[FR Doc. 93-25778 Filed 10-19-93; 8:45 am]
BILLING CODE 6560-50-C

[OPP-100132; FRL-4647-2]

Mitchell Systems Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Mitchell Systems Corporation has been awarded a contract to perform work for the EPA Office of Pesticide Programs (OPP), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Mitchell Systems Corporation consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2), and will enable Mitchell Systems to fulfill the obligations of the contract.

DATES: Mitchell Systems Corporation will be given access to this information no sooner than October 25, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda B. Alexander, Program Management and Support Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 234, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-5259.

SUPPLEMENTARY INFORMATION: Under Contract Number 68-D1-0124, Work Assignment Number 93-4, Mitchell Systems Corporation will provide administrative support assistance by tracking information submitted to EPA by pesticide manufacturers and exporters related to the sale of specific pesticides outside the United States. This contract involves no subcontractor.

OPP has determined that the contract herein described involves work that is being conducted in connection with FIFRA and that access by Mitchell Systems Corporation to information on all pesticide products is necessary for the performance of this contract. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, 7, and 17 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with Mitchell Systems Corporation, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Mitchell Systems Corporation is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Work Assignment Manager for this contract in OPP. All information supplied to Mitchell Systems Corporation by EPA for use in connection with this contract will be returned to EPA when Mitchell Systems Corporation has completed its work.

List of subjects

Environmental protection, Transfer of data.

Dated: September 27, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93-25479 Filed 10-19-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4792-3]

Illinois Adequacy Determination of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region 5).

ACTION: Notice of tentative determination on application of Illinois for full program adequacy determination, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste will comply with the revised Federal Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the United States Environmental Protection Agency (U.S. EPA) to determine whether States have adequate permit programs for MSWLFs, but does not mandate issuance of a rule for such determinations. The U.S. EPA has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR) that will provide procedures by which the U.S. EPA will approve, or partially approve, State/Tribal MSWLF permit programs as applications are submitted. Thus, the approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal MSWLF permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved MSWLF permit programs can use the site-specific flexibility provided by the revised Federal Criteria to the extent the State/Tribe MSWLF permit program allows such flexibility. The U.S. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the revised Federal Criteria will apply to all permitted and unpermitted MSWLF facilities.

Illinois applied for a determination of adequacy under section 4005 of RCRA. At the same time, Illinois developed legislation to facilitate full approval of its solid waste program. The legislation, Public Act 88-496, adds definitions and requirements that are no less stringent than portions of the revised Federal Criteria. In addition, the legislation allows the Illinois Environmental Protection Agency (IEPA) to incorporate and enforce, for an interim period, portions of the revised Federal Criteria as part of the Illinois solid waste permit program. The specific revised Federal Criteria that Illinois will incorporate are identified in the Illinois Solid Waste Management Permit Program Application for Determination of Adequacy, June 1993. The IEPA's interim period of enforcement expires when the U.S. EPA approves the Illinois solid waste program and reviews regulations adopted by the Illinois Pollution Control Board (IPCB).

The U.S. EPA reviewed Illinois' application and has made a tentative determination that the combination of Illinois' existing MSWLF permit program, the incorporation of certain portions of the revised Federal Criteria, and the interim period of IEPA

enforcement created by Public Act 88–496, are adequate to assure compliance with the revised Federal Criteria. The Illinois application for program adequacy determination is available for public review and comment.

The U.S. EPA has also received proposed IPCB regulations for review. See, *In the Matter of: RCRA Subtitle D Amendments*, Illinois Pollution Control Board, R93–10 (Identical in Substance Rule), dated September 15, 1993. Review of the IPCB regulations may occur prior to or after the U.S. EPA's final determination of program adequacy. If the U.S. EPA's review is completed prior to the final determination of program adequacy, and the IPCB regulations are equivalent to portions of the revised Federal Criteria, U.S. EPA may approve the Illinois solid waste program with the IPCB regulations. If the U.S. EPA's review is completed after the final determination of adequacy, U.S. EPA will approve the Illinois solid waste program with the interim period of IEPA enforcement as set forth in the Illinois application.

Although RCRA does not require the U.S. EPA to hold a hearing on any determination to approve a State/Tribal MSWLF permit program, Region 5 has scheduled an opportunity for a public hearing on this tentative determination. Details appear in the "DATES" section.

DATES: All comments on Illinois' application for a determination of adequacy must be received by U.S. EPA Region 5 by the close of business on November 29, 1993. A public hearing will be held at the Region 5 U.S. EPA office on November 29, 1993, starting at 1 p.m. IEPA will be present at the public hearing held by the U.S. EPA on this subject.

ADDRESSES: All written comments should be sent to the U.S. EPA address Attn: Mr. Andrew Tschampa, Mailcode HRP–8J. The location of the public hearing is U.S. EPA, Room 331, 77 West Jackson Boulevard, Chicago, Illinois.

Copies of Illinois' application for adequacy determination are available between 9 a.m. and 4 p.m. during normal working days at the following addresses for inspection and copying: IEPA, 2200 Churchill Road, Springfield, Illinois, and U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Tschampa at the above address or at (312) 886–0976.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, the U.S. EPA promulgated revised Federal Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the revised Federal Criteria. Subtitle D also requires in section 4005 that the U.S. EPA determine the adequacy of State MSWLF permit programs to ensure compliance with the revised Federal Criteria. To fulfill these requirements, the Agency has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

The U.S. EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of the STIR. The U.S. EPA interprets the requirements for States or Tribes to develop adequate programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to the revised Federal Criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, the U.S. EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator who fails to comply with an approved MSWLF program.

The U.S. EPA will determine whether a State/Tribe has submitted an adequate program based on the interpretation outlined above. The U.S. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. The U.S. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF permit program before it gives full approval to a MSWLF permit program.

B. State of Illinois

On March 31, 1993, Illinois submitted an application for program adequacy determination. The U.S. EPA has reviewed Illinois' application and has tentatively determined that the combination of the State's existing permit program, incorporation of certain portions of the revised Federal Criteria, and the interim period of IEPA enforcement created by Public Act 88–496, will ensure full compliance with all of the revised Federal Criteria.

The Illinois legislation, Public Act 88–496, contains the following elements that are considered equivalent to the revised Federal Criteria:

1. Permit exemption for on-site disposal facilities that dispose of household waste (as defined in 40 CFR 258.2) would end.
2. Required closure of facilities that stop receiving waste prior to October 9, 1993, within 6 months of the last receipt of wastes, or subject the facilities to all of the requirements of 40 CFR 258.1(d).
3. Creation of a new category of landfills based on the 40 CFR 258.2 "municipal solid waste landfill unit" definition.
4. Adoption of a definition of "existing MSWLF unit" that, in combination with other Illinois permit program requirements, is substantially similar to the definition contained in 40 CFR 258.2.
5. Adoption of definitions for "household waste," "lateral expansion," and "new MSWLF unit" that are equivalent to the 40 CFR 258.2 definitions.
6. Establishment of a post-closure care period for MSWLFs that is equivalent to the 40 CFR 258.61 requirements.
7. Removal of financial assurance exemption for local units of government (40 CFR 258.70).
8. Calculation of post-closure care financial assurance in current dollars (40 CFR 258.72).
9. Requirement that all operators of new and existing MSWLF units provide full financial assurance for corrective action (40 CFR 258.73).

The IEPA will use the interim enforcement authority granted by section 22.41 of Public Act 88–496 to incorporate the following elements of revised Federal Criteria into the Illinois permit program:

1. "Consideration of environmental laws" requirement (40 CFR 258.3).
2. "Airport safety" requirements (40 CFR 258.10) into portions of the Illinois permit program that currently do not include equivalent requirements.
3. "Floodplains" requirements (40 CFR 258.11) into portions of the Illinois permit program that currently do not include equivalent requirements.
4. "Unstable areas" requirements (40 CFR 258.15) into portions of the Illinois permit program that currently do not include equivalent requirements.
5. "Closure of existing MSWLFs" requirements (40 CFR 258.16) into portions of the Illinois permit program that currently do not include equivalent requirements.

6. "Procedures for excluding the receipt of hazardous waste" requirements (40 CFR 258.20) into portions of the Illinois permit program that currently do not include equivalent requirements.

7. "Explosive gas control" requirements (40 CFR 258.23) into portions of the Illinois permit program that currently do not include equivalent requirements.

8. "Run-on run-off control systems" requirements (40 CFR 258.26) into portions of the Illinois permit program that currently do not include equivalent requirements.

9. "Surface water" requirements (40 CFR 258.27) into portions of the Illinois permit program that currently do not include equivalent requirements.

10. "Liquids restrictions" requirements (40 CFR 258.28).

11. "Recordkeeping" requirements (40 CFR 258.29) into portions of the Illinois permit program that currently do not include equivalent requirements.

12. Elements of "design criteria" requirements (40 CFR 258.40).

13. Elements of "applicability" requirements (40 CFR 258.50).

14. Elements of "groundwater sampling and analysis" requirements (40 CFR 258.53).

15. Elements of "detection monitoring program" requirements (40 CFR 258.54).

16. Elements of "assessment monitoring program" requirements (40 CFR 258.55).

17. "Assessment of corrective measures" requirements (40 CFR 258.56).

18. "Selection of remedy" requirements (40 CFR 258.57).

19. "Implementation of the corrective action program" requirements (40 CFR 258.58).

20. Elements of "closure criteria" requirements (40 CFR 258.60).

21. Elements of "post-closure care" requirements (40 CFR 258.61).

22. Elements of "applicability and effective date" requirements (40 CFR 258.70).

23. Elements of "financial assurance for closure" requirements (40 CFR 258.71).

24. Elements of "financial assurance for post-closure care" requirements (40 CFR 258.72).

25. "Financial assurance for corrective action" requirements (40 CFR 258.73).

26. Elements of "allowable mechanisms" requirements (40 CFR 258.74).

The revised Federal Criteria that will be incorporated into the Illinois permit program (1–26 above) will eventually be replaced by equivalent regulations developed by the IPCB. As previously discussed, the U.S. EPA has received proposed IPCB regulations. If the U.S. EPA's review is completed prior to the final determination of program adequacy, and the IPCB regulations adequately incorporate the revised Federal Criteria listed above, U.S. EPA may approve the Illinois solid waste program with the IPCB regulations. If the U.S. EPA's review is completed after the final determination of adequacy, U.S. EPA will approve the Illinois solid waste program with the interim period of IEPA enforcement as set forth in the Illinois application.

The Illinois landfill design requirements consist of compacted earth or a composite liner (combination of compacted earth and a geomembrane liner). The Illinois permit program requires that operators use an acceptable groundwater contaminant transport model to demonstrate that Illinois groundwater standards are not being exceeded at the point of compliance. The point of compliance in Illinois is the property boundary or 100 feet from the edge of a unit, whichever is less. Meeting the Illinois groundwater standards (including the incorporation of Table I standards as allowed through the legislation) would ensure that the 40 CFR 258.40 Table I values will not be exceeded at the point of compliance in the uppermost aquifer. The Illinois design requirements are considered equivalent to the revised performance standards of 40 CFR 258.40 (a).

In its assessment monitoring program, Illinois will require the facility to test groundwater monitoring wells that exhibit concentrations of Appendix I constituents exceeding background levels for all of the Appendix II constituents. For subsequent sampling, the operator will be allowed to propose a subset of the Appendix II parameters for more frequent sampling of that well based on the results of the Appendix II sampling and leachate data. The surrounding monitoring wells in assessment monitoring would be tested for the Appendix II constituents detected in the triggered well and the leachate, and any remaining Appendix II constituents that have not yet been tested in the leachate. In addition, the leachate will be tested at least annually for all Appendix II parameters while the facility is in assessment monitoring, and any detected Appendix II parameters that are not already included in the groundwater monitoring program will then be added to the parameter list for all the groundwater monitoring wells at the facility. The Illinois legislation allows IEPA to incorporate these elements into its groundwater monitoring program. With the incorporation of these elements, the Illinois groundwater monitoring program is considered to be equivalent to 40 CFR 258.55.

The Illinois program requires all new and existing facilities to have a final cover system consisting of a low permeability layer. The final cover system must achieve a permeability of 1 x 10^{-7} centimeters per second or less, the same permeability required for the compacted earth liner. The Illinois legislation allows IEPA to require operators to demonstrate reductions in infiltration rates equivalent to the design criteria in 40 CFR 258.60(a) through use of the U.S. EPA HELP model. This approach is considered to be equivalent to 40 CFR 258.60.

The U.S. EPA will hold a public hearing on its tentative decision, and comments can be submitted as transcribed from the discussion at the hearing or in writing at the time of the hearing. Written public comment concerning the U.S. EPA's tentative determination will be accepted until November 29, 1993. Copies of Illinois' application are available for inspection and copying at the location indicated in the "ADDRESSES" section of this notice.

The U.S. EPA will consider all public comments on its tentative determination during the public comment period and public hearing. Issues raised by those comments may be the basis for a determination of inadequacy for the Illinois' program. The U.S. EPA will make a final decision on whether or not to approve Illinois' program by January 15, 1994, and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and responses to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the revised Federal Criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As the U.S. EPA explained in the preamble to the final revised Federal Criteria, the U.S. EPA expects that any owner or operator complying with the provisions in a State/Tribal program approved by the U.S. EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this tentative approval will not have a significant impact on a substantial number of small entities. It does not impose any new burdens on small entities. This proposed notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: October 8, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93-25757 Filed 10-19-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4791-6]

Underground Injection Control Program Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Oxy Petrochemicals, Incorporated

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition reissuance.

SUMMARY: Notice is hereby given that reissuance of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Oxy Petrochemicals, Inc., for the Class I injection wells located at Corpus Christi, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Oxy Petrochemicals, Inc., of the specific restricted hazardous waste identified in the petition for reissuance, into the Class I hazardous waste injection wells at the Corpus Christi, Texas facility specifically identified in the reissued petition, for as long as the basis for granting an approval of this petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued August 13, 1993. The public comment period ended on September 27, 1993. No comments were recieved during the public comment period. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of October 8, 1993.

ADDRESSES: Copies of the reissued petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W-SU), 1445 Ross Avenue, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Mac Weaver, Chief UIC Programs Section, EPA—Region 6, telephone (214) 655-7160.

Jack V. Ferguson,

Acting Director, Water Management Division (6W).

[FR Doc. 93-25762 Filed 10-19-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4792-1]

New Source Review Reform Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: On July 7, 1993, the EPA gave notice of the establishment of the New Source Review (NSR) Reform Subcommittee (Subcommittee) (58 FR 36407) under the auspices of the Clean Air Act Advisory Committee (55 FR 46993) which was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app I). The Subcommittee's purpose is to provide independent advice and counsel to the EPA on policy and technical issues associated with reforming the NSR rules.

OPEN MEETING DATES: Notice is hereby given that the Subcommittee's open meeting, originally scheduled for September 27-28, 1993 (58 FR 46190), has been rescheduled for November 8-9, 1993, from 8 a.m. to 5 p.m., at the Sheraton University Center, 2800 Middleton Avenue, Durham, North Carolina 27705 (telephone (919) 383-8575; telefax (919) 383-8495). The September 1993 meeting was canceled (58 FR 50360) at the Subcommittee's request for additional time. Due to the size of the meeting room, seating is limited to approximately 100 individuals and will be made available on a first come, first serve basis.

The Subcommittee will review draft options and recommendations developed by subgroups on specific areas regarding Class I area impacts and best available control technology. In addition, the Subcommittee will address NSR applicability-related issues.

INSPECTION OF COMMITTEE DOCUMENTS: Documents relating to the above-noted topics will be publicly available at the meeting. Thereafter, these documents, together with transcript of the Subcommittee's meeting, will be available for public inspection in EPA Air Docket No. A-90-37. The docket is available for public inspection and copying between 8:30 a.m. to 12 noon and 1:30 to 3:30 p.m., weekdays, at EPA's Air Docket (LE-131), room M-1500, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

The transcript will also be available to the public through EPA's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN) electronic bulletin board. For assistance in accessing the OAQPS TTN, contact the systems operator at (919) 541-5384 in Research Triangle Park, North Carolina during normal business hours.

FOR FURTHER INFORMATION: For questions concerning the Subcommittee or its activities, please contact Mr. David Solomon, Designated Federal Official to the Subcommittee at (919) 541-5375, telefax (919) 541-5509, or by mail at U.S. EPA, OAQPS, Air Quality Management Division (MD-15), Research Triangle Park, North Carolina 27711.

Dated: October 7, 1993.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 93-25786 Filed 10-19-93; 8:45 am]

BILLING CODE 6560-50-P

[OPP-66184; FRL 4647-1]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by January 18, 1994, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C),

Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 67 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR VOLUNTARILY CANCELLATION

Registration No.	Product Name	Chemical Name
000192–00045	Destruxol Tender Leaf Plant Spray	Nicotine
000352–00523	Du pont Avatar Herbicide	2-Chloro-*N*-(((4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino)carbonyl)
		Methyl 2-((((4-methoxy-6-methyl-1,3,5-triazin-2-yl)methylamino)
000352 AZ–79–0004	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 DE–81–0002	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 FL–78–0051	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 FL–80–0026	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 FL–84–0029	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 GA–77–0004	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 GA–80–0025	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 GA–80–0026	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 ID–79–0019	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 ID–81–0039	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 ID–85–0003	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 IL–81–0010	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 IL–82–0016	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 KY–80–0021	Dupont Benlate Fungicide	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 LA–82–0017	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 MD–81–0012	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 MI–78–0001	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 MI–82–0005	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 MO–81–0017	Du Pont Benlate Fungicide	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 MO–82–0022	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 MS–77–0004	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 MS–85–0003	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 NC–81–0031	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 NM–81–0019	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 NY–77–0004	Du Pont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 NY–81–0005	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 OH–78–0005	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 OR–78–0021	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 OR–79–0030	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 OR–80–0080	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 PA–77–0005	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 PA–77–0006	Du Pont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 PA–78–0008	Du Pont Benlate Fungicide	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 PA–81–0012	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 SC–77–0002	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 VT–80–0004	Du Pont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 WA–79–0016	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR VOLUNTARILY CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
000352 WA–79–0083	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 WA–81–0035	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 WA–82–0002	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 WA–82–0037	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 WA–85–0010	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 WA–91–0020	Du pont Glean Herbicide	2-Chloro-*N*-[((4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino)carbonyl]
000475–00069	Liquid Sani-Flush	Oxalic acid
		Hydrogen chloride
000475–00199	Sani-Flush Liquid Disinfectant Toilet Bowl Cleaner	Oxalic acid
		Hydrogen chloride
		Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12})
		Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C_{12}, 32%C_{14})
000475–00225	Germicidal Sani-Flush Toilet Bowl Cleaner Extra Strength	Sodium bisulfate
000550–00178	Liquid Bleach Industrial Grade	Sodium hypochlorite
000602–00182	Purina Chlorine Sanitizer-0-40	Sodium dichloro-*s*-triazinetrione
000602–00185	Purina Chlorinating Sanitizer 0-10	Sodium dichloro-*s*-triazinetrione
000618 WA–81–0062	Agri-Strep (Streptomycin Sulfate Agricultural Merck) T	Streptomycin sulfate
		Streptomycin sulfate
001007 WA–82–0038	Mycoshield Brand of Agricultural Terramycin	Calcium oxytetracycline
002548–00051	Max Kill 3% Malathion with Synergized Pyrethrins	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
003125–00058	Di-Syston 5% Granular Insecticide	*O,O*-Diethyl *S*-(2-(ethylthio)ethyl) phosphorodithioate
003125–00061	Di-Syston 10% Granular Systemic Insecticide	*O,O*-Diethyl *S*-(2-(ethylthio)ethyl) phosphorodithioate
003125–00119	Di-Syston Liquid Concentrate Systemic Insecticide	*O,O*-Diethyl *S*-(2-(ethylthio)ethyl) phosphorodithioate
003125–00130	DI Syston 5% Granular Septemic Insecticide for Repackage	*O,O*-Diethyl *S*-(2-(ethylthio)ethyl) phosphorodithioate
003125–00142	Morestan 2% Dust	6-Methyl-2,3-quinoxalinedithiol cyclic *S,S*-dithiocarbonate
004816–00067	Rotenone Solution FK-11	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Rotenone
		Cube Resins other than rotenone
005185–00313	Algidize Swimming Pool Algicide	2-Chloro-4,6-bis(ethylamino)-*s*-triazine
005905–00095	Helena Brand 2,4-D Ester 4	Butyl 2,4-dichlorophenoxyacetate
		Isopropyl 2,4-dichlorophenoxyacetate
005905–00096	Helena Brand 2,4-D Ester 6	Butyl 2,4-dichlorophenoxyacetate
		Isopropyl 2,4-dichlorophenoxyacetate
008590–00508	Agway Garden Weeder II	2-Chloro-4,6-bis(ethylamino)-*s*-triazine
010370–00250	Pool Algae 80	2-Chloro-4,6-bis(ethylamino)-*s*-triazine
055947 SD–91–0003	Banvel Herbicide	Dimethylamine 3,6-dichloro-*o*-anisate
065655–00001	Alpha MCPA-40	Diethanolamine 2-methyl-4-chlorophenoxyacetate

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000192	Dexol Industries, 1450 W. 228th St, Torrance, CA 90501.
000352	E. I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000475	Reckitt & Coleman Household Products, 1655 Valley Rd, Wayne, NJ 07474.
000550	Van Waters & Rogers, Inc., Subsidiary of Univar, Box 34325, Seattle, WA 98104.
000602	Purina Mills, Inc., Box 66812, St Louis, MO 63166.
000618	Merck & Co Inc., Box 450, Three Bridges, NJ 08887.
001007	Pfizer Inc. - Specialty Chemicals, 235 E. 42nd St, New York, NY 10017.
002548	Research Products Co., Division of Mcshares, Inc., Box 1460, Salina, KS 67402.
003125	Miles Inc., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
004816	Roussel UCLAF Corp., 95 Chestnut Ridge Rd, Montvale, NJ 97645.
005185	Bio-Labs Inc., Box 1489, Decatur, GA 30031.
005905	Helena Chemical Co, 6075 Popular Ave - Suite 500, Memphis, TN 38119.
008590	Agway Inc., c/o Universal Cooperatives Inc., Box 460, Minneapolis, MN 55440.
010370	Roussel UCLAF Corp., 95 Chestnut Ridge Rd, Montvale, NJ 07645.
065655	Gilmore Associates, 5501 Murray Rd, Memphis, TN 38119.

III. Loss of Active Ingredients

Unless these requests for cancellation are withdrawn, one pesticide active ingredient will no longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrants to explore the possibility of their withdrawing the request for cancellation. This active ingredient is listed in the following Table 3 with the EPA Company Number of their registrant.

TABLE 3. — ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

CAS No.	Chemical Name	EPA Company No.
20405-19-0	Diethanolamine 2-methyl-4-chlorophenoxy-acetate	065655

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before January 18, 1994. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1-year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, product registrations.

Dated: September 27, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93-25640 Filed 10-19-93; 8:45 am]
BILLING CODE 6560-50-F

[SW-FRL-4789-8]

RCRA Ground-Water Monitoring: Draft Technical Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of guidance manual.

SUMMARY: The Environmental Protection Agency ("EPA" or "Agency") announces the availability of a guidance manual entitled "RCRA Ground-Water Monitoring: Draft Technical Guidance." This manual was designed to assist owners and operators of permitted hazardous waste land disposal facilities in implementing the ground-water monitoring regulations for regulated units contained in 40 CFR part 264

subpart F and the permitting standards of 40 CFR part 270. The manual is intended to update and supplement information contained in other sources of EPA guidance such as the Technical Enforcement Guidance Document (TEGD) and Chapter Eleven of the Agency's manual titled Test Methods for Evaluating Solid Waste, commonly known as "SW–846".

"RCRA Ground-Water Monitoring: Draft Technical Guidance" contains seven chapters. The first chapter is an introduction to the background and scope of the manual. Chapter Two describes the basic approach that an owner/operator should take in designing a detection monitoring program. The third chapter discusses the importance of defining requirements and technical objectives prior to initiating a ground-water monitoring program. Chapter Four identifies techniques and procedures for characterizing site hydrogeology prior to installing a ground-water monitoring well system. The fifth chapter discusses the design of detection monitoring systems in aquifers dominated by flow through porous media and in aquifers dominated by conduit flow. Chapter Six provides guidance regarding monitoring well design and construction. The seventh chapter of the guidance manual discusses ground-water sampling and analysis.

DATES: Comments on this guidance manual must be submitted on or before February 17, 1994.

ADDRESSES: Commenters must send an original and two copies of their comments to: Docket Clerk, Office of Solid Waste (OS–305), Docket No. [F–93–GWMA–FFFFF], U.S. Environmental Protection Agency Headquarters, 401 M Street, SW., Washington, DC 20460. Comments should include the docket number [F–93–GWMA–FFFFF]. The public docket is located in room M2427 at EPA Headquarters and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Appointments may be made by calling (202) 260–9327. Copies cost $0.15 per page. Charges under $25.00 are waived. In addition, this document is available for purchase through the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia 22161, telephone (703) 487–4600: "RCRA Ground-Water Monitoring: Draft Technical Guidance" (NTIS #PB93–139–350).

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (800) 424–9346, TDD (800) 553–7672 (hearing impaired); in the Washington, DC metropolitan area the number is (703) 412–9810, TDD (703) 486–3323.

For technical information contact Jim Brown, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (703) 308–8656. Please note that copies of this document are available to government employees through the RCRA docket (EPA/530–R–93–001). Non-government employees should contact NTIS to acquire a copy (NTIS #PB93–139–350).

SUPPLEMENTARY INFORMATION: The hazardous waste management regulations for permitted facilities (40 CFR part 264) were promulgated in July 1982 under Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), and the Hazardous and Solid Waste Amendments of 1984 (HSWA). Subpart F of these regulations, Releases From Solid Waste Management Units, sets forth performance standards for ground-water monitoring systems at permitted hazardous waste land disposal facilities. These standards require owners and operators of land-based hazardous waste disposal facilities to sample and analyze ground water at specific time intervals to determine whether or not hazardous wastes or constituents released from these facilities are contaminating ground water.

The guidance manual entitled "RCRA Ground-Water Monitoring: Draft Technical Guidance" was prepared by the Office of Solid Waste of the United States Environmental Protection Agency ("EPA" or "Agency") to provide guidance for implementing the ground-water monitoring regulations for regulated units contained in 40 CFR part 264 subpart F and the permitting standards of 40 CFR part 270. The manual also provides guidance to owners and operators of treatment, storage, and disposal facilities (TSDFs) that are required to comply with the requirements of 40 CFR part 264 subparts J (Tank Systems), K (Surface Impoundments), L (Waste Piles), N (Landfills), and X (Miscellaneous Units). While sections of the manual can be used as guidance for implementation of the ground-water monitoring regulations for interim status facilities contained in 40 CFR part 265, the methods and procedures presented in this guidance manual are designed for permitted facilities that are subject to the part 264 regulations.

The guidance manual is intended to update and supplement information contained in other sources of EPA guidance such as the Technical Enforcement Guidance Document (TEGD, GPO:055–000–00–260–6) and Chapter Eleven of the Agency's manual titled Test Methods for Evaluating Solid Waste (GPO:955–001–00000–1), commonly known as "SW–846". The TEGD provides guidance for interim status facilities that have not received an operating permit and are thus subject to the requirements specified under 40 CFR part 265. Whereas the TEGD was written primarily for the use of enforcement officials when implementing the interim status provisions, "RCRA Ground-Water Monitoring: Draft Technical Guidance" was written to assist owners and operators of permitted facilities in the design and implementation of ground-water monitoring programs. Although Chapter Eleven of SW–846 was written for use by owners and operators of permitted facilities, Chapter Eleven of SW–846 was not intended to function as a comprehensive guide for ground-water monitoring; rather, it is a brief listing of ground-water monitoring protocols.

The guidance manual contains seven chapters. The first chapter is an introduction to the background and scope of the document. Chapter Two describes the basic approach that an owner/operator should take in designing a detection monitoring program. Chapter Three discusses the importance of defining requirements and technical objectives prior to initiating a ground-water monitoring program.

Chapter Four of the guidance manual identifies techniques and procedures for characterizing site hydrogeology prior to installing a ground-water monitoring well system. Chapter Four presents various methods for characterizing the geology of a site, such as the implementation of a subsurface boring program and geophysical techniques. This chapter also discusses methods for characterizing ground-water flow beneath a site, including ground-water flow direction and ground-water flow rate. In addition, Chapter Four explains how hydrogeologic data should be presented.

Chapter Five discusses the design of detection monitoring systems in aquifers dominated by flow through porous media and in aquifers dominated by conduit flow. Chapter Five discusses the vertical and lateral placement of monitoring wells, well screen lengths, and the use of springs as monitoring points.

Chapter Six provides guidance on monitoring well design and construction. It provides an overview of monitoring well drilling methods and a

discussion of factors to consider in the selection of well casing and screen materials. Chapter Six also discusses how to design well intakes, install annular sealants, complete wells at the surface, and develop monitoring wells.

Chapter Seven of the guidance manual discusses ground-water sampling and analysis. This chapter focuses on the elements of the Quality Assurance Project Plan (QAPjP) that should be prepared by the owner/operator to describe ground-water sample collection and analysis activities. Chapter Seven discusses pre-sampling activities, such as determining sampling frequency, measuring static water elevation, detecting and sampling immiscible layers, and well purging. Chapter Seven also discusses the selection and use of ground-water sampling equipment, containerizing and preserving samples, chain-of-custody procedures, and Quality Assurance/Quality Control considerations.

Dated: August 30, 1993.

Walter W. Kovalick, Jr.,

Assistant Surgeon General, USPHS, Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 93-25758 Filed 10-19-93; 8:45 am]

BILLING CODE 6560-60-P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee; Agency Form Submitted for OMB Review

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice.

SUMMARY: The Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC") has sent to the Office of Management and Budget the following proposal for the collection of information under the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be received on or before November 19, 1993.

ADDRESSES: Send comments to Paul N. Romani, Associate Director for Administration, Appraisal Subcommittee, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC 20037, and Gary Waxman, Clearance Officer, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Marc L. Weinberg, General Counsel, Appraisal Subcommittee, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC 20037, or at (202) 634-6520, from whom copies of the information collection and supporting documents are available.

Summary of Proposal(s)

(1) *Collection title:* 12 CFR part 1102, subpart D, §§ 1102.305, *Availability of interpretive, no-action and other written communications;* 1102.305, *Confidential Treatment Procedures;* and 1102.307, *Right to petition for issuance, amendment and repeal of rules of general application.*

(2) *Form(s) submitted:* Not applicable.

(3) *Frequency of collection:* On occasion.

(4) *Use:* The information will be used by the ASC and its staff in determining whether to grant a person's request for confidential treatment of information subject to a FOIA request and to grant a person's petition for the ASC to engage in the rulemaking. The ASC is required to adopt these rules to implement 5 U.S.C. 552 and 553(e) and EO 12600.

(5) *Estimated number of respondents:* 103.

(6) *Frequency of response:* Once.

(7) *Estimated hours for respondents to provide information:* 30 minutes per respondent.

(8) *Estimated total annual reporting and recordkeeping burden:* 51.5 hours.

Dated: October 15, 1993.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Edwin W. Baker,

Executive Director.

[FR Doc. 93-25756 Filed 10-19-93; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Lykes/Matson Cooperative Working Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011311-001

Title: Lykes/Matson Cooperative Working Agreement

Parties:

Lykes Bros. Steamship Co., Inc.
Matson Navigation Company

Synopsis: The proposed amendment provides that the parties shall submit annual reports concerning the number of containers, amount of breakbulk cargo moved by each carrier inbound and outbound, the amount of each carrier's container and breakbulk capacity available to shippers both inbound and outbound, and any reports or studies prepared by or for either party or the Agreement itself.

Dated: October 15, 1993.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93-25724 Filed 10-19-93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 092093 AND 100193

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Jones Apparel Group, Inc., Crystal Brands, Inc., T–M Ventures, Inc	93–1625	09/20/93
Ford Motor Company, Great Western Financial Corporation, Great Western Bank, a Federal Savings Bank	93–1701	09/20/93
Noble Affiliates, Inc., RM Properties Inc., FM Properties Operating Co	93–1720	09/20/93
Robert F. X. Sillerman, R. Steven Hicks, Capstar Communications, Inc	93–1725	09/20/93
Deluxe Corporation, PaperDirect, Inc., PaperDirect, Inc	93–1653	09/22/93
Snap-on Tools Corporation, Merrill Lynch & Co., Inc., J.H. Williams Industrial Products, Inc	93–1671	09/23/93
Global Stone Corporation, Penn Virginia Corporation, Tenn Luttrel Company	93–1705	09/23/93
Robert Shaye, R.E. Turner, Turner Broadcasting System, Inc	93–1722	09/23/93
Homer I. Altice, Reebok International Ltd., Ellesse U.S.A., Inc	93–1728	09/23/93
Tele-Communications, Inc., Telle-Communications, Inc., American Mobile Systems Incorporated	93–1729	09/23/93
Golder, Thoma, Cressey Fund III Limited Partnership, Mr. Jeffrey M. Gamble, Bell Funeral Home, Inc., et al	93–1730	09/20/93
Pacific Electric Wire & Cable Col, Ltd., John E. Harris, Newmark Home Corporation	93–1743	09/23/93
Harmon International Industries, Inc., GiroCredit Bank Aktiengesellschaft der Sparkassen, AKG Akustische u. Kino-Gerate Gesellschaft M.B.H.	93–1749	09/23/93
Gerald W. Schwartz, MEI Diversified Inc., MEI Salon Corp	93–1587	09/24/93
WMX Technologies, Inc., Durward W. Jackson, Waste Away Group, Inc	93–1632	09/24/93
Sonat Inc., Mobil Corporation, Mobil Producing Texas & New Mexico, Inc.	93–1669	09/24/93
Tecumseh Products Company, General Electric Company, General Electric Company	93–1713	09/24/93
Harleysville Mutual Insurance Company, American Community Mutual Insurance Company, Lake States Insurance Company, Lake States Insurance Company	93–1746	09/24/93
Finanziaria De Agostini s.r.l., Maxwell Communication Corporation plc, P.F. Collier, Inc	93–1747	09/24/93
Planeta Holding s.a., Maxwell Communication Corporation plc, P.F. Collier, Inc	93–1748	09/24/93
Sonat Inc., Sonat Inc., Sonat/P Anadarko Limited partnership	93–1754	09/24/93
Fund America Ventures Corporation, Keith H. Gornick, Ward Lake Drilling, Inc	93–1755	09/24/93
The Clayton & Dubilier Private Equity Fund IV, L.P., General Motors Corporation, Allison Gas Turbine Division	93–1762	09/24/93
DynCorp, Technology Applications Inc., Technology Applications Inc	93–1774	09/24/93
IBL, S.A., FMM Partners, Ltd., Facet McKinley Motel Limited Partnership	93–1776	09/24/93
Roberts Pharmaceutial Corporation, Bristol-Myers Squibb Company, Bristol-Myers Squibb Company	93–1661	09/27/93
Kansas City Southern Industries, Inc., The Continuum Company, Inc., The Continuum Company, Inc	93–1679	09/27/93
The Continuum Company, Inc., Kansas City Southern Industries, Inc., Vantage Computer Systems, Inc	93–1680	09/27/93
Mellon Bank Corporation, Westinghouse Electric Corporation, Westinghouse Electric Corporation	93–1719	09/27/93
Robert Castello, George Terry, Holsin Drug Co., Inc	93–1736	09/27/93
Robert Castello, Michael Simon, Holsin Drug Co., Inc	93–1737	09/27/93
Sonoco Products Company, Engraph, Inc., Engraph, Inc	93–1738	09/27/93
Pohlad Companies, Allied Group, Inc., Dougherty Dawkins, Inc	93–1750	09/27/93
Peter G. Angelos, Eli S. Jacobs, The Orioles, Inc	93–1784	09/27/93
Heitman Real Estate Fund V, Carena Holdings, Inc., H–B Associates Albuquerque	93–1787	09/27/93
California Microwave, Inc., TeleSciences, Inc., TeleSciences Transmission Systems, Inc	93–1580	09/28/93
McKesson Corporation, Koninklijke BolsWessanen NV, Tree of Life, Inc	93–1709	09/28/93
The Ogden Newspapers, Inc., SD Investments, Inc., Minot Daily News Co	93–1690	09/30/93
The Ogden Newspapers, Inc., Philip F. Buckner, Buckner News Alliance, Inc., Lewistown Sentinel, Inc	93–1692	09/30/93
Odyssey Partners, L.P., Seneca Insurance Holdings, Inc., Seneca Insurance Holdings, Inc	93–1710	09/30/93
Mellon Bank Corporation, The Continental Corporation, AFCO Credit Corporation	93–1721	09/30/93
Dixons Group plc, Oliver L. Fretter, Fretter, Inc	93–1761	09/30/93
Fleet Financial Group, Inc., Witco Corporation, Chemprene, Inc.	93–1769	09/30/93
GranCare, Inc., CompuPharm, Inc., CompuPharm, Inc	93–1791	09/30/93
Broad Street Investment Fund I, L.P., The Continental Corporation, Underwriters Re Holdings Corp.	93–1631	10/01/93
McGraw-Hill, Inc., Maxwell Communication Corporation plc, Macmillan/Mcgraw-Hill School publishing Company	93–1687	10/01/93
McGraw-Hill, Inc., McGraw-Hill, Inc., Macmillan/McGraw-Hill School Publishing Company	93–1691	10/01/93

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–25783 Filed 10–19–93; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration For Children And Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of new information collection requirements found at section 107(c) of the Child Abuse Prevention and Treatment Act as amended (42 U.S.C. 5101 *et seq.*).

Sections 107 (a) and (g) of title I authorize the award of funds to States that meet specified eligibility requirements for the purpose of assisting States to develop, strengthen and carry out child abuse and neglect prevention and treatment programs. Section 107(c) requires States to submit a Child Abuse Prevention and Treatment Act (CAPTA) State Plan every four years to the Secretary of the Department of Health and Human Services, acting through the National Center on Child Abuse and Neglect (NCCAN).

ADDRESSES: Copies of the proposed information collection may be obtained

from Steven R. Smith of the Office of Information Systems Management, ACF, by calling (202) 401–6964. Written comments and questions regarding this information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Child Abuse Prevention and Treatment Act (CAPTA) State Program Plan.

OMB No.: 0980-New Request.

Description: Section 107(c) of the Child Abuse Prevention and Treatment Act requires States to submit to the Secretary of the Department of Health and Human Services, acting through the National Center of Child Abuse and Neglect of the Administration for Children and Families (ACF), a Child Abuse Prevention and Treatment Act (CAPTA) State Plan in order to be eligible for a grant under this section. Under the provisions of subsection (c) of section 107, a State shall submit every four years a plan that specifies the area or areas of the State child protective services' system to be improved, providing data on current system capability, and indicating how funds will be used to make improvements. A State must submit a CAPTA State Plan as a prerequisite for a fiscal year 1994 Child Abuse and Neglect State Grant Award.

Section 107(a) of the Act authorizes the Secretary, acting through NCCAN, to award grants to the States for the purpose of assisting the States in improving their child protective services system in one or more of the following areas: intake and screening of reports; investigating reports; case management; general system enhancement; and research and demonstration activities.

Annual Number of Respondents: 52.

Annual Frequency: 1.

Average Burden Hours Per Response: 32.

Total Burden Hours: 1,664.

Dated: October 7, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93–25687 Filed 10–19–93; 8:45 am]

BILLING CODE 4184-01-M

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for an extension of the Uniform Reporting Requirements for Four State Grant Programs authorized by the Child Abuse Prevention and Treatment Act. These grant programs are: the Basic State Grant Program; the Medical Neglect/Disabled Infants Grant Program; the Children Justice Act Grant Program; and the Community-Based Child Abuse and Neglect Prevention Grant Program. This information collection sponsored by the National Center on Child Abuse and Neglect was previously approved under OMB Control Number 0980–0181 for use through 10/31/93.

ADDRESSES: Copies of this information collection request may be obtained from Steve R. Smith of the Office of Information Systems Management, ACF, by calling (202) 401–6964.

Written comments and questions regarding the requested approval should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Uniform Reporting Requirements for Four State Grant Programs authorized by the Child Abuse Prevention and Treatment Act, i.e., Basic State Grant, Medical Neglect/Disabled Infants Grant, Children's Justice Act Grant, and Community-Based Child Abuse and Neglect Prevention Grant.

OMB No.: 0890–0181.

Description: The National Center on Child Abuse and Neglect (NCCAN) is a component of the Administration for Children and Families (ACF). The NCCAN has overall responsibility for the administration of four State formula grant programs authorized by the Child Abuse Prevention and Treatment Act, as amended (Pub. L. 100–294, Pub. L. 101–126, Pub. L. 101–226 and Pub. L. 102–295). These grant programs are: the Basic State Grant Program, the Medical Neglect/Disabled Infants Grant Program, the Children's Justice Act Grant Program, and the Community-Based Child Abuse and Neglect Prevention Grant Program. Each of the State grant programs is designed to assist States in addressing specific issues related to child abuse and neglect.

As each new State grant program was established, separate instructions with respect to fiscal and program performance reports were developed to address the unique purposes of the specific grant program. As a result, there was a substantial lack of uniformity in program performance reports across the four grant programs. This lack of uniformity seriously hampered NCCAN's capability to carry out their responsibilities for monitoring the expenditure of Federal funds, evaluating and measuring State achievements in addressing the problems of child abuse and neglect, and compiling comprehensive information for use in reaching program and policy decisions. The uniform reporting approach has enhanced both Federal and State abilities to monitor and assess child abuse and neglect prevention and treatment efforts. NCCAN Headquarters and the Regional Administrators who share responsibilities for administering the four programs must annually prepare a report which describes the activities, accomplishments, and expenditures under each of the programs to the Secretary of the Department of Health and Human Services and to the Congress as required by Section 102 of the Act. This information will also provide ACF and the States an overview of program trends and information needed to ascertain whether a State is in compliance with requirements of the Act.

Annual Number of Respondents: 52.

Annual Frequency: 8.

Average Burden Hours Per Response: 32.

Total Burden Hours: 13,312.

Dated: October 7, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93–25692 Filed 10–19–93; 8:45 am]

BILLING CODE 4184-01-M

Administration For Children And Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for a three-year reinstatement of Form ACF–700 as proposed in this package. This request entitled: "Child Care and Development Block Grant Second Annual Report to the Congress: An Interim Report on Program Services and Expenditures" was previously approved under OMB Control Number 0980–0241. This request is sponsored by the Division of Child Care of the Administration for Children and Families (ACF).

ADDRESSES: Copies of this information collection may be obtained from Steven R. Smith of the Office of Information Systems Management, ACF, by calling 202–401–6946.

Written comments and questions regarding this information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Child Care and Development Block Grant Second Annual Report to the Congress: An Interim Report on Program Services and Expenditures (Form ACF–700).

OMB No.: 0980–0241.

Description: The Child Care and Development Block Grant Act authorizes the Secretary of the Department of Health and Human Services to award grants to States, Territories, Indian Tribes, and Tribal Organizations to increase the availability, affordability and quality of child care. Section 658K of the Child Care and Development Block Grant Act (section 5082 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508) and 45 CFR 98.70 and 98.71 require grantees to prepare and submit an annual report on the program. The statute and regulations require the first annual report to be an interim report, covering expenditures through September 30, 1992, and with a due date not later than December 31, 1992.

As with the first interim report, the second interim report will consist of information on the uses for which the grantees expended funds, the extent to which the affordability and availability of child care services have increased, and any additional information required by the Secretary. The requirements for subsequent annual reports will identify the additional information which grantees must submit as it is available, including: the number of children being assisted by CCDBG and other Federal child care and pre-school programs; the type and number of child care programs, child care providers, caregivers, and support personnel in the grantee's service area; salaries and other compensation paid to full- and part-time child care service providers; and activities to encourage public-private partnerships that promote business involvement in meeting child care needs.

The data collected in this second interim report are necessary for the submission of the required annual report to Congress, as specified in section 658L of the Act. This information will also assist in program evaluation, management, and monitoring. In addition, grantees must submit information on their review of licensing and regulatory requirements, as well as describe the standards and health and safety requirements applicable to child care providers in their area, if such information was not submitted with the first interim report that was due December 31, 1992.

Annual Number of Respondents: 260.

Annual Frequency: 1.

Average Burden Hours Per Response: 50.

Total Burden Hours: 13,000.

Dated: October 7, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93–25693 Filed 10–19–93; 8:45 am]

BILLING CODE 4184–01–M

Third Meeting of the Advisory Committee on Head Start Quality and Expansion

AGENCY: Administration for Children and Families, DHHS.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to Public Law 92–463, the Federal Advisory Committee Act, that the Advisory Committee on Head Start Quality and Expansion will hold its third meeting on Tuesday, November 2, 1993 at the Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC.

The meeting shall be open to the public. The proposed final agenda will include a discussion of the draft report of the Advisory Committee.

Records shall be kept of all Committee proceedings and shall be available for public inspection at 370 L'Enfant promenade, SW., Aerospace Building, suite 600, Washington, DC 20447.

If a sign language interpreter is needed, contact David Siegel at the address and telephone below.

FOR FURTHER INFORMATION CONTACT: David Siegel, 7th floor, Aerospace Building, 370 L'Enfant Promenade, SW., Washington, DC 20047 (202) 401–9215.

Dated: October 15, 1993.

Lawrence J. Love,

Deputy Assistant Secretary for Program Operations.

[FR Doc. 93–25838 Filed 10–18–93; 11:22 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 92N–0412]

Raj Matkari; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Deputy Commissioner for Operations of the Food and Drug Administration (FDA) denies a hearing for and issues a final order permanently debarring Mr. Raj Matkari, 1304 Riverglen Way, Berthoud, CO 80513, under section 306(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 335a(a)). The Deputy Commissioner bases this order on her finding that Mr. Matkari was convicted of a Federal felony for conduct relating to the development or approval, including the process for development or approval of a drug product; and relating to the regulation of a drug product under the act.

EFFECTIVE DATE: October 20, 1993.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Megan L. Foster, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

Mr. Raj Matkari, the former Vice President for Regulatory Affairs and Product Development of Pharmaceutical Basics, Inc. (PBI), pled guilty and was sentenced on July 28, 1989, for giving an unlawful gratuity, a felony offense under 18 U.S.C. 201(c)(1)(A). The basis for this conviction was Mr. Matkari's payment of approximately $2,000 to an FDA chemistry review branch chief who was involved in the regulation of PBI's drug products and who was specifically responsible for supervising the chemists who reviewed PBI's applications to determine whether these applications met certain statutory standards for approval.

In a certified letter received by Mr. Matkari on November 25, 1992, the Deputy Commissioner for Operations offered Mr. Matkari an opportunity for a hearing on a proposal to issue an order under section 306(a) of the act debarring Mr. Matkari from providing services in any capacity to a person that has an

approved or pending drug product application. FDA based the proposal to debar Mr. Matkari on its finding that he was convicted of a felony under Federal law for conduct relating to the development, approval, and regulation of PBI's drug products.

The certified letter also informed Mr. Matkari that his request for a hearing could not rest upon mere allegations or denials but must present specific facts showing that there was a genuine and substantial issue of fact requiring a hearing. The letter also noted that if it conclusively appeared from the face of the information and factual analyses in his request for a hearing that there was no genuine and substantial issue of fact which precluded the order of debarment, FDA would enter summary judgment against him, making findings and conclusions, and denying his request for a hearing.

Mr. Matkari responded to the proposal to debar in a letter filed by FDA on January 2, 1993, in which he requested a hearing. Mr. Matkari also submitted a brief argument in support of his hearing request in a letter filed by FDA on February 4, 1993.

The Deputy Commissioner has considered Mr. Matkari's arguments and concludes that they are unpersuasive and fail to raise a genuine and substantial issue of fact requiring a hearing. Mr. Matkari's arguments and the agency's responses follow.

II. Mr. Matkari's Arguments in Support of a Hearing

Mr. Matkari first argues that his conduct does not fall within the provisions for mandatory debarment but instead falls within those for permissive debarment. Mr. Matkari fails to support this statement with an explanation or further argument.

Paragraphs (a)(2)(A) and (a)(2)(B) of section 306 of the act require FDA to debar an individual if the Secretary finds that the individual has been convicted of a felony under Federal law for conduct: (1) Relating to the development or approval, including the process for development or approval, of any drug product; or (2) otherwise relating to the regulation of any drug product under the act.

These mandatory debarment provisions apply to Mr. Matkari's conviction for payment of an illegal gratuity. While this crime is listed in the permissive debarment provisions, section 306(b)(2)(B)(ii), an individual convicted of this crime will be considered to be a candidate for permissive debarment only if FDA finds that the conduct giving rise to the conviction did not relate to the development or approval or the regulation of any drug product. Because FDA finds that Mr. Matkari's conduct leading to his conviction did relate to the development and approval and the regulation of his corporation's drug products, the mandatory provisions, rather than the permissive provisions, are applicable in this case. Mr. Matkari has not disputed FDA's finding that his conduct leading to his conviction relates to the development and approval and the regulation of his corporation's drug products. Therefore, Mr. Matkari's claim fails to raise a genuine and substantial issue of fact.

In his second and final argument, Mr. Matkari claims that the debarment provisions do not apply retroactively to convictions that predate the enactment of the statute. He does not support this claim with further argument.

The provision of the act which applies to Mr. Matkari, section 306(a)(2), is clearly retroactive. This is evidenced in section 306(a) of the act, which treats mandatory debarment of corporations differently with respect to retroactivity from mandatory debarment of individuals. Mandatory debarment of corporations under 306(a)(1) of the act is not retroactive because it only applies to convictions "after the date of enactment of this section." However, section 306(a)(2) of the act, which pertains to mandatory debarment of individuals, does not contain this limiting language. Therefore, if Congress had intended for section 306(a)(2) of the act not to be retroactive, it would have included the language "after the date of enactment of this section."

Section 306(l)(2) of the act, which sets out the effective dates for each provision of the act, also indicates that section 306(a)(2) is retroactive. The only limitation section 306(l)(2) sets on section 306(a) of the act is that section 306(a) shall not apply to a conviction which occurred more than 5 years before the initiation of an agency action. This language indicates that any applicable conviction may be used as the basis for debarment, so long as it occurred no more than 5 years prior to the initiation of debarment proceedings. Certain other provisions covered in section 306(l) of the act are further limited by the statement that the section shall not apply to an action which occurred before June 1, 1992. Thus, when Congress intended that a certain section not be retroactive, it set a specific effective date or used specific limiting language as in section 306(a)(1) of the act. Congress' intentional omission of an effective date for section 306(a)(2) of the act indicates its intent that this section be retroactive.

Mr. Matkari acknowledges that he was convicted of a felony as alleged by the agency in its proposal to debar him but has failed to demonstrate that his conviction does not relate to the development, approval, or regulation of any drug product. In addition, Mr. Matkari's legal arguments do not create a basis for a hearing and, in any event, are unpersuasive. Therefore, Mr. Matkari has failed to raise a genuine and substantial issue of fact regarding this conviction. Accordingly, the Deputy Commissioner for Operations denies Mr. Matkari's request for a hearing.

III. Findings and Order

Therefore, the Deputy Commissioner for Operations, under section 306(a) of the act, finds that Mr. Raj Matkari has been convicted of a felony under Federal law for conduct (1) Relating to the development or approval, including the process for development or approval, of a drug product (21 U.S.C. 335a(a)(2)(A)); and (2) relating to the regulation of a drug product (21 U.S.C. 335a(a)(2)(B)).

As a result of the foregoing findings, Mr. Raj Matkari is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective October 20, 1993 (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(ee)). Any person with an approved or pending drug product application who knowingly uses the services of Mr. Matkari in any capacity, during his period of debarment, will be subject to civil money penalties (21 U.S.C. 335b(a)(6)). If Mr. Matkari, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (21 U.S.C. 335b(a)(7)). In addition, FDA will not accept or review any abbreviated new drug application or abbreviated antibiotic drug application submitted by or with the assistance of Mr. Matkari during his period of debarment.

Mr. Matkari may file an application to attempt to terminate his debarment pursuant to section 306(d)(4)(A) of the act. Any such application would be reviewed under the criteria and processes set forth in section 306(d)(4)(C) and (d)(4)(D) of the act. Such an application should be identified with Docket No. 92N-0412 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four

copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 27, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93-25672 Filed 10-19-93; 8:45 am]

BILLING CODE 4160-01-P

[Docket No. 93N-0368]

Drug Export; Antihemophilic Factor (Human), Affinity Chromatography Purified, Solvent Detergent/Heat Treated, Method C

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Alpha Therapeutic Corp. has filed an application requesting approval for the export of the biological product Antihemophilic Factor (Human), Affinity Chromatography Purified, Solvent Detergent/Heat Treated, Method C to the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frederick W. Blumenschein, Center for Biologics Evaluation and Research (HFM-660), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-594-1070.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Alpha Therapeutic Corp., 5555 Valley Blvd., Los Angeles, CA 90032, has filed an application requesting approval for the export of the biological product Antihemophilic Factor (Human), Affinity Chromatography Purified, Solvent Detergent/Heat Treated, Method C to the United Kingdom. The Antihemophilic Factor (Human), Affinity Chromatography Purified, Solvent Detergent/Heat Treated, Method C is indicated solely for the prevention and control of bleeding in patients with moderate or severe Factor VIII deficiency due to hemophilia A or acquired Factor VIII deficiency. The application was received and filed in the Center for Biologics Evaluation and Research on August 30, 1993, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by November 1, 1993, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: October 1, 1993.

P. Michael Dubinsky,

Deputy Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 93-25677 Filed 10-19-93; 8:45 am]

BILLING CODE 4160-01-F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Veterinary Medicine Advisory Committee

Date, time, and place. November 9, 1993, 8:30 a.m., and November 10, 1993, 8 a.m., Goshen Room, Holiday Inn-Gaithersburg, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open committee discussion, November 9, 1993, 8:30 a.m. to 10 a.m.; open public hearing, 10 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 2:15 p.m.; open public hearing, 2:15 p.m. to 3:30 p.m., unless public participation does not last that long; open committee discussion, 3:30 p.m. to 4:30 p.m.; closed committee deliberations, November 10, 1993, 8 a.m. to 5 p.m.; Gary E. Stefan, Center for Veterinary Medicine (HFV-244), 7500 Standish Pl., Rockville, MD 20855, 301-594-1769.

General function of the committee. The committee reviews and evaluates available data concerning safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal disease and increased animal production.

Agenda—Open public hearing. Any interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Open committee discussion. The committee will discuss flexible labeling for approved new animal drugs, and FDA's Compliance Policy Guide on Proper Drug Use and Residue Avoidance by Non-Veterinarians.

Closed committee deliberations. The committee will review and discuss trade secret and/or confidential commercial information relevant to a new animal drug application. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b (c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee

deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10 (a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: October 14, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–25740 Filed 10–19–93; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96–511).

1. *Type of Request:* Extension; *Title of Information Collection:* Certification Recommendation—Clinical Laboratory Improvement Amendments (CLIA) Laboratory; *Form No.:* HCFA–197; *Use:* This form is completed by State survey agencies. The information from this form will be used by HCFA regional office personnel to make decisions concerning CLIA certification, recertification, and limitations of laboratory services; *Frequency:* Biennially; *Respondents:* Businesses or other for profit, State or local government, small businesses or organizations; *Estimated Number of Responses:* 31,200; *Average Hours Per Response:* 0.25; *Total Estimated Burden Hours:* 7,800.

2. *Type of Request:* Extension; *Title of Information Collection:* Laboratory Personnel Report—CLIA; *Form No.:* HCFA–209; *Use:* This form is used to determine laboratory compliance with the personnel requirements under CLIA. This information is needed for laboratory certification and recertification; *Frequency:* Biennially;

Respondents: State or local governments, small businesses or other for profit; *Estimated Number of Responses:* 31,200; *Average Hours Per Response:* 0.5; *Total Estimated Burden Hours:* 15,600.

3. *Type of Request:* New; *Title of Information Collection:* Medigap Complaint Data Base; *Form No.:* HCFA–R–156; *Use:* HCFA is responsible with monitoring the Medigap policies to include a review of State handling of beneficiary Medigap related complaints. To monitor this program it is necessary to develop a data base to house Medigap specific complaint data. These data from the State insurance department are to ensure insurance companies that sell Medicare supplemental insurance policies and, if appropriate, their agents continue to comply with Federal requirements; *Frequency:* Quarterly; *Respondents:* State or local governments; *Estimated Number of Responses:* 930; *Average Hours Per Response:* 0.20; *Total Estimated Burden Hours:* 186.

4. *Type of Request:* Reinstatement; *Title of Information Collection:* Request for Certification as a Rural Health Clinic (RHC) and RHC Survey Report Form; *Form No.:* HCFA–29 and HCFA–30; *Use:* HCFA–29, Request for Certification as a Supplier of RHC Services Under the Medicare/Medicaid Programs, is used as an application to be completed by suppliers of RHC services requesting participation in the Medicare/Medicaid programs. HCFA–30 is an instrument used by State survey agencies to record data collected in order to determine compliance with the Federal requirements; *Frequency:* Annually; *Respondents:* State and local governments, small businesses or organizations; *Estimated Number of Responses:* 148; *Average Hours Per Response:* 1.75; *Total Estimated Burden Hours:* 259.

5. *Type of Request:* Reinstatement; *Title of Information Collection:* Screening Mammography Services Data Report; *Form No.:* HCFA–292; *Use:* This form is used to initiate the certification and recertification process for suppliers of mammography screening services. The form is used to determine if a facility has the appropriate personnel to participate in the Medicare program; *Frequency:* Annually; *Respondents:* State or local governments, small businesses or organizations; *Estimated Number of Responses:* 10,000; *Average Hours Per Response:* .25; *Total Estimated Burden Hours:* 2,500.

6. *Type of Request:* Reinstatement; Title of Information Collection: Ambulatory Surgical Center Request for Certification and Survey Report Form; *Form Nos.:* HCFA–377 and –378; *Use:* The Ambulatory Surgical Request for Certification, HCFA–377, is used as an application for facilities wishing to participate in the Medicare program. The form initiates the process of obtaining a decision as to whether conditions required for coverage are met. The Ambulatory Surgical Center Survey Report, HCFA–378, is an instrument used by the State survey agencies to record data collected in order to determine supplier compliance with individual conditions of coverage and to report that information to the Federal government. The form includes basic information about the facility, a met/not met checklist, and explanatory statements. The request for certification and the survey form are used by HCFA to make a decision as to whether a supplier has the basic capabilities to participate in the Medicare program, and whether a survey is appropriate. The data are entered into HCFA systems to serve as an information base for creation of a record for Federal certification and monitoring; *Frequency:* Annually; *Respondents:* Ambulatory Surgical Centers; *Estimated Number of Responses:* 2,400 (1,200 for each form); *Average Hours Per Response:* .25 (form 377) and 0.50 (form 378); *Total Estimated Burden Hours:* 900.

7. *Type of Request:* Extension; *Title of Information Collection:* Blood Bank Inspection Checklist and Report; *Form No.:* HCFA–282; *Use:* This form is used to establish compliance by clinical laboratories with the provisions of the CLIA of 1988. The form is used by State survey agencies to report to HCFA its findings on facility compliance with certain regulatory conditions that is required to participate in the Medicare program; *Frequency:* Biennially; *Respondents:* Businesses or other for profit, State or local government, nonprofit institutions, Federal agencies or employees; *Estimated Number of Responses:* 2,500; *Average Hours Per Response:* 0.5; *Total Estimated Burden Hours:* 1,250.

8. *Type of Request:* Reinstatement; *Title of Information Collection:* Medicaid Program Budget Report; *Form No.:* HCFA–37; *Use:* This report is prepared by the State Medicaid agencies and is used by HCFA for developing national Medicaid budget estimates, quantification of budget assumptions, the issuance of quarterly Medicaid grant awards, and the collection of projected State receipts of donations and taxes; *Frequency:* Quarterly; *Respondents:* State or local government; *Estimated Number of Responses:* 228; *Average Hours Per Response:* 35; *Total Estimated Burden Hours:* 7,980.

9. *Type of Request:* Reinstatement; *Title of Information Collection:* Supplier of ESRD Services in the Medicare Program; *Form No.:* HCFA–3402; *Use:* This form is a facility identification and screening measurement used to initiate the certification or recertification process for ESRD facilities; *Frequency:* Annually; *Respondents:* State or local government; *Estimated Number of Responses:* 1,101; *Average Hours Per Response:* .167; *Total Estimated Burden Hours:* 183.87.

10. *Type of Request:* New Collection; *Title of Information Collection:* Grantee Data Collection Instrument; *Form No.:* HCFA–645; *Use:* Section 4360(f) of Public Law 101–508 requires the Secretary of the Department of Health and Human Services to provide a series of reports to the U.S. Congress; *Frequency:* Unknown; *Respondents:* State or local government; *Estimated Number of Responses:* 52; *Average Hours Per Response:* 10; *Total Estimated Burden Hours:* 520.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch Attention: Allison Eydt, New Executive Office Building, room 3001, Washington, DC 20503.

Dated: October 7, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 93–25680 Filed 10–19–93; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications

listed below may be obtained by writing to Mark D. Hankins, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, Maryland 20892 (telephone 301/496–7735; fax 301/402–0220). A signed Confidentiality Agreement will be required to receive copies of the patent applications. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

05/610,457 Nuclease-Resistant Hydrophilic Complex of Polyribocytidylic Acid (U.S. Patent No. 4,024,241)
05/886,343 Neisseria Gonorrhoeae Vaccine (U.S. Patent No. 4,203,971) (see also 06/079,556)
06/079,556 Neisseria Gonorrhoeae Vaccine (U.S. Patent No. 4,239,749) (see also 05/886,343)
06/170,570 Water Soluble Forms of Retinoids (U.S. Patent No. 4,371,673)
06/181,954 Monoclonal Antibodies to Herpes Simplex Virus Type 1 Polypeptides (U.S. Patent No. 4,430,437) (see also 06/443,682)
06/208,029 Nuclease-Resistant Hydrophilic Complex of Polyriboinosinic-Polyribocytidtylic Acid (U.S. Patent No. 4,349,538)
06/375,553 Lysis of Trypanosoma Cruzi (U.S. Patent No. 4,474,772)
06/443,682 Monoclonal Antibodies to Herpes Simplex Virus Type 1 Polypeptides (U.S. Patent No. 4,572,896) (see also 06/181,954)
06/670,202 Pyrazine Diazohydroxide Compounds and Methods for Their Production and Use (U.S. Patent No. 4,709,033)
06/916,796 Process for Manufacture of L-Asparaginase from Erwinia Chrysanthemi (U.S. Patent No. 4,729,957)
07/068,921 Method of Enhancing Lipophile Transport Using Cyclodextrin Derivatives
07/590,443 Recombinant Clones of Chlamydia Trachomatis Lipopolysaccharide (U.S. Patent No. 5,075,228)
07/633,402 Regioselective Substitutions in Cyclodextrins (U.S. Patent No. 5,096,893)
07/679,302 Nucleotide Deduced Amino Acid Sequence, Isolation and Purification of Heat-Shock Chylamdial Proteins
07/734,777 Novel Peptide Antigens and Immunoassays, Test Kits and Vaccines using the Same
07/737,854 RFAD Gene and Product
07/761,224 Growth-Restricted Dengue Type 4 Viruses and Vaccines Against the Same
07/762,137 Isolation and Characterization of cDNA of Plasmodium Falciparum Glucose-6-Phosphate Dehydrogenase
07/791,377 Pneumococcal Fimbrial Protein A (see also 07/816,286)
07/816,286 Pneumococcal Fimbrial Protein A Vaccines (see also 07/791,377)
07/821,453 Detoxified LPS-Cholera Toxin Conjugate Vaccine for Prevention of Cholera
07/866,033 Nucleotide Sequences for the Glycoprotein-Encoding Genes of U.S. Wildtype Measles Viruses
07/873,017 Measles Virus-Specific Antibody Detection Using Recombinant Measles Proteins
07/894,063 Peptide for Stimulation of Cytotoxic T Lymphocytes Specific for Hepatitis C Virus in a Mammal
07/906,841 Peptide Which Produces Protective Immunity Against Tetanus
07/912,294 Target Antigens of Transmission Blocking Antibodies for Malaria Parasites
07/912,443 Inhibition of Chitinase as a Means for Controlling Infectious Diseases by Blocking Transmission
07/923,034 Compositions and Methods for Detecting Human Herpesvirus 7
07/923,743 Compositions and Methods for Detecting Human Herpesvirus 6 Strain Z29
07/932,960 Pertussis Toxin Used as a Carrier Protein with Non-charged Saccharrides in Conjugate Vaccines
07/957,075 Vaccine for Dengue Virus
08/026,178 Reagents for Identifying Mycoplasma Pneumoniae

Dated October 8, 1993.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 93–25746 Filed 10–19–93; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Amended Notice of Meetings of the Board of Scientific Counselors, Division of Cancer Prevention and Control and its Subcommittees

Notice is hereby given of a change in the times of meeting of the Board of Scientific Counselors, Division of Cancer Prevention and Control (DCPC), National Cancer Institute, and its Subcommittees on October 21–22, 1993 which was published in the Federal Register (58 FR 43365) on August 16, 1993. The full Board will meet in Conference Room 6, 6th Floor, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees will be held at the Executive Plaza Complex at the times and places listed below. The meetings of the Board and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 630, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meetings and rosters of committee members, upon request.

Other information pertaining to these meetings can be obtained from the Executive Secretary, Linda M. Bremerman, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 318, 9000 Rockville Pike, Bethesda, Maryland 20892 (301–496–8526), upon request.

Name of Committee: Board of Scientific Counselors, Division of Cancer Prevention and Control
Executive Secretary: Linda M. Bremerman, EP N, room 318 Bethesda, MD 20892; (301) 496–8526
Date of Meeting: October 21–22, 1993
Place of Meeting: Building 31, Conference Room 6
Open: October 21—8 am to 5 pm
Agenda: Review progress of programs within the Division and review of concepts being considered for funding.
Open: October 22—8:30 am to 4 pm
Agenda: Review progress of programs within the Division and review of concepts being considered for funding.

Name of Committee: Surveillance Subcommittee
Executive Secretary: Linda M. Bremerman, EP N, room 318 Bethesda, MD 20892; (301) 496–8526
Date of Meeting: October 21, 1993
Place of Meeting: Building 31, Conference Room 11A10
Open: 5:30 pm to 8 pm
Agenda: Discuss current and future programs of Surveillance Subcommittee and review of concepts being considered for funding.

Name of Committee: Early Detection and Community Oncology Subcommittee
Executive Secretary: Linda M. Bremerman, EP N, room 318 Bethesda, MD 20892; (301) 496–8526
Date of Meeting: October 21, 1993
Place of Meeting: Building 31, Conference Room 6
Open: 5:30 pm to 8 pm
Agenda: Discuss current and future programs of Early Detection and Community Oncology Subcommittee

and review of concepts being considered for funding.
Name of Committee: Cancer Control Science Subcommittee
Executive Secretary: Linda M. Bremerman, EP N, room 318 Bethesda, MD 20892; (301) 496–8526
Date of Meeting: October 21, 1993
Place of Meeting: Building 31, Conference Room 9
Open: 5:30 pm to 8 pm
Agenda: Discuss current and future programs of Cancer Control Science Subcommittee and review of concepts being considered for funding.
Name of Committee: Cancer Prevention Research Subcommittee
Executive Secretary: Linda M. Bremerman, EP N, room 318 Bethesda, MD 20892; (301) 496–8526
Date of Meeting: October 21, 1993
Place of Meeting: Building 31, Conference Room 8
Open: 5:30 pm to 8 pm
Agenda: Discuss current and future programs of Cancer Prevention Research Subcommittee and review of concepts being considered for funding.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Linda M. Bremerman, (301) 496–8526 in advance of the meeting.

(Catalog Of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: October 14, 1993.

Wendy Baldwin,

Acting Deputy Director for Extramural Research, NIH.

[FR Doc. 93–25861 Filed 10–19–93; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meeting of the Subcommittee To Evaluate the National Cancer Program, National Cancer Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Subcommittee to Evaluate the National Cancer Program, National Cancer Advisory Board, October 22, 1993 in the Cardinal Room at the O'Hare Airport, Skybird Meeting Center, Chicago, Illinois.

The meeting will be open to the public from 9:30 a.m. to 5:30 p.m. Attendance by the public will be limited to space available. Discussions will address the evaluation and achievements of the National Cancer Program.

Ms. Carole Frank, Committee Management Specialist, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 630M, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708), will provide a summary of the meeting and a roster of the Subcommittee members upon request.

Ms. Cherie Nichols, Executive Secretary, Subcommittee to Evaluate the National Cancer Program, National Cancer Advisory Board, National Cancer Institute, National Institutes of Health, Building 31, room 11A23, Bethesda, Maryland 20892 (301/496–5515), will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Cherie Nichols on (301/496–5515) in advance of the meeting.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

Dated: October 14, 1993.

Wendy Baldwin,

Acting Deputy Director for Extramural Research, NIH.

[FR Doc. 93–25862 Filed 10–19–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting of the Clinical Trials Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Clinical Trials Review Committee, National Heart, Lung, and Blood Institute, October 31–November 3, 1993, Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

The meeting will be open to the public on October 31 from 7 p.m. to approximately 7:30 p.m. to discuss administrative details and to hear a report concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting will be closed to the public on October 31 from approximately 7:30 p.m. to adjournment on November 3, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A–21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Individuals who plan to attend and need special assistance, such as sign language interpretations or other reasonable accommodations, should contact the Scientific Review Administrator in advance of the meeting.

Dr. David M. Monsees, Jr., Scientific Review Administrator, Clinical Trials Review Committee, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Westwood Building, room 550B, Bethesda, Maryland 20892, (301) 594–7450, will furnish substantive program information.

This notice is being published later than the 15 days prior to the meeting due to difficulty of coordinating schedules.

(Catalog of Federal Domestic Assistance program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institute of Health.)

Dated: October 14, 1993.

Wendy Baldwin,

Acting Deputy Director for Extramural Research

[FR Doc. 93–25860 Filed 10–19–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Drug Abuse on October 26–27, 1993, at the Addiction Research Center, 2nd Floor Conference Room, 4940 Eastern Avenue, Baltimore, Maryland 21224.

The meeting will be open to the public on October 26 from 8 a.m. to 8:15 a.m. for announcements and reports of administrative, legislative, and program developments in the drug abuse field.

In accordance with provisions set forth in Section 552b(c)(6), title 5, U.S.C. and Section 10(d) of Public Law

92–463, the meeting will be closed to the public on October 26 from 8:15 a.m. to adjournment on October 27 to review, discuss, and evaluate intramural research programs and projects and productivity and performance of individual staff scientists, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting and a roster of committee members may be obtained from Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, room 10–42, 5600 Fishers lane, Rockville, Maryland 20857 (301/443–2755).

Substantive program information may be obtained from Mr. Brian Butters, Addiction Research Center, P.O. Box 5180, Baltimore, Maryland 21224 (410/550–1538).

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact person named above in advance of the meeting.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs)

Dated: October 15, 1993.

Wendy Baldwin,

Acting Deputy Director for Extramural Research, NIH.

[FR Doc. 93–25863 Filed 10–19–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–93–3674]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 27, 1993.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

Proposal: Schedule of Pooled Mortgages—Single Family Loans, Graduated Payment Loans, and Growing Equity Loans.

Office: Government National Mortgage Association (GNMA).

Description of the Need for the Information and its Proposed Use: The form provides a means of identifying specific single family mortgages in the pool and assures that all required mortgage and related documents have been delivered to a document custodian. This information is necessary to assure GNMA's interest in the pooled mortgages in the event of a default.

Form Number: HUD–11706.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	No. of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD–11706	1,250		18		.25		5,938

Total Estimated Burden Hours: 5,938.

Status: Reinstatement.

Contact: Charles Clark, HUD, (202) 708–2234; Angela Antonelli, OMB, (202) 305–6880.

Dated: September 27, 1993.

Proposal: Rental Rehabilitation Program.

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: Public Law 98–181, Section 17 requires grantees and state recipients participating in the Rental Rehabilitation Program to report and maintain for monitoring, data relating to tenants assisted both before and after rehabilitation. Regulations also imposes recordkeeping burdens consistent with the requirements of section 17 and related laws and authorities.

Form Number: HUD–40014, 40014–B, 40021, and 40070.

Respondents: State or local Governments.

Frequency of Submission: Annually.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Reporting	725		11.6		.8		6,738
Recordkeeping	725		1.0		7.2		5,200

Total Estimated Burden Hours: 11,938.

Status: Reinstatement.

Contact: Franklin Price, HUD, (202) 708–2094; Angela Antonelli, OMB, (202) 395–6880.

Dated: September 27, 1993.

Proposal: Notice to Proceed.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: The Notice to Proceed is the official PHA order directing the contractor to commence construction on a public housing project. It establishes the date the construction starts, the number of days for construction completion, the date of completion, and the name of the project contracting officer.

Form Number: None.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: On Occasion and Recordkeeping.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Reporting	173		1		.25		43
Recordkeeping	173		1		.25		43

Total Estimated Burden Hours: 86.

Status: Reinstatement.

Contact: Raymond Hamilton, HUD, (202) 708–1938; Angela Antonelli, OMB, (202) 395–6880.

Dated: September 27, 1993.

Proposal: Comprehensive Grant Program (CGP).

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: The CGP will allocate modernization funds to large PHAS/IHAS on the basis of a formula. The requested information will provide data necessary to approve the required Comprehensive Plan, reserve CGP funds, and monitor performance.

Form Number: HUD–52831, 52832, 52833, 52834, 52835, 52836, 52837 and 52839.

Respondents: Individuals or Households, State or Local Governments, and Non-Profit Institutions.

Frequency of Submission: Annually.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collections	854		1		176		139,622

Total Estimated Burden Hours: 139,622.

Status: Extension.

Contact: Janice D. Rattey, HUD, (202) 708–1800; Angela Antonelli, OMB, (202) 395–6880.

Dated: September 23, 1993.

Proposal: Assessment of American Indian Housing Needs and Programs Survey.

Office: Policy Development and Research.

Description of the Need for the Information and its Proposed Use: This information collection will aid in the assessment of housing conditions and needs of the American Indians and Alaska natives.

Form Number: None.

Respondents: State or Local Governments; Businesses or Other for-Profit; Federal Agencies or Employees; and Small Businesses or Organizations.

Frequency of Submission: One Time.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	1,333		1		.66		879

Total Estimated Burden Hours: 879.

Status: New.

Contact: John M. Goering, HUD, (202) 708–3700; Angela Antonelli, OMB, (202) 395–6880.

Dated: September 16, 1993.

Proposal: Supplement to Subscription Agreement for Cooperative Housing Applicants Under Sections 213 and 221(d)(3).

Office: Housing.

Description of the Need for the Information and its Proposed Use: The form HUD–93232A is a critical element and source document by which the Department determines the cooperative member and group capacity to meet the financial requirement of the project.

Form Number: HUD–93232A.

Respondents: Individuals or Households.

Frequency of Submission: On Occasion.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–93232A	5,000		1		.7		3,500

Total Estimated Burden Hours: 3,500.

Status: Extension.

Contact: Georgia M. Yeck, HUD, (202) 708–2556; Angela Antonelli, OMB, (202) 395–6880.

Dated: September 16, 1993.

Proposal: Manufactured Home Construction and Safety Standards Act.

Office: Housing.

Description of the Need for the Information and its Proposed Use: The National Manufactured Housing Construction and Safety Standards Act authorized HUD to establish construction and safety standards for manufactured (mobile) homes and to enforce these standards. The standards require pertinent information in the form of labels and notices to be placed in each manufactured home. HUD needs this information to make sure manufacturers are complying with the standards.

Form Number: None.

Respondents: Individuals or Households, State or Local Governments, and Businesses or Other For-Profit.

Frequency of Submission: Monthly and Recordkeeping.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
SAA Reports	432		1		.64		277
IPIA Reports	252		1		1.00		252
Manufacturer Records	225,000		1		.16		36,000
Consumer Information Cards	225,000		1		.48		108,000
State Plans	324		1		1.00		324
Consumer Manuals	225,000		1		.08		18,000
Labels and Notices	225,000		1		.22		49,500
Recordkeeping	295		1		305		89,975

Total Estimated Burden Hours: 302,328.

Status: Revision.

Contact: B. Jeannie Magee, HUD, (202) 708–7430; Angela Antonelli, OMB, (202) 395–6880.

Dated: September 16, 1993.

Proposal: Program Utilization for use in the Section 8 Rental Certificate and Rental Voucher Programs.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: Form HUD–52683 provides data to HUD to monitor the use of Certificates of Family participation, the number of families under a HAP contract and rental voucher contract, and the degree of success experienced by program participants in locating and leasing suitable rental housing.

Form Number: HUD–52683.

Respondents: State or Local Governments.

Frequency of Submission: Semi-Annually.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Form HUD–52683	2,500		2		1		5,000

Total Estimated Burden Hours: 5,000.

Status: Reinstatement.

Contact: Gerald J. Benoit, HUD, (202) 708–0477; Angela Antonelli, OMB, (202) 395–6880.

Dated: September 17, 1993.

[FR Doc. 93–25679 Filed 10–19–93; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–93–3673]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 28, 1993.

John T. Murphy,

Director, IRM Policy and Management Division.

Proposal: The Supportive Housing Program Application.

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: The information provided in the application package will be reviewed by HUD and evaluated against rating criteria for possible grant funding.

Form Number: HUD–40076 and SF–424.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application preparation	900		1		42		37,800

Total Estimated Burden Hours: 37,800.

Status: Extension.

Contact: Helen Guzzo, HUD, (202) 708–4300, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 28, 1993.

Proposal: Shelter Plus Care Application.

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: The information provided in the application package will be reviewed by HUD and evaluated against rating criteria for possible grant funding.

Form Number: HUD–40085 and SF–424.

Respondents: State or Local Governments.

Frequency of Submission: On Occasion.

Reporting Burden:

	No. of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Application preparation	300		1		40		12,000
Environmental review	100		1		14		1,400

Total Estimated Burden Hours: 13,400.

Status: Extension.

Contact: Jean Whaley, HUD, (202) 708–1234, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 28, 1993.

[FR Doc. 93–25678 Filed 10–19–93; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–010–94–4333–04]

Road Closure and Restrictions To Entry and Use; Deep Channel Truck Trail; Co

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of road closure and restrictions to entry and use.

SUMMARY: Pursuant to agreements made in settling pending court action regarding the use of certain roads, and 43 CFR 83641.1, notice is hereby given that those segments of the Deep Channel Truck Trail under BLM jurisdiction, are closed to use by the public, from the intersection of the Deep Channel Truck Trail with the Indian Valley Truck Trail, east, to Moffat County Road 57. In addition, that segment of the separate road crossing the W½ of section 5, T. 3 N., R. 96 W., 6th PM, in a northwesterly/southeasterly direction, is closed to all forms of motorized travel from the point where it crosses Pinto Gulch, to its junction with the Deep Channel Truck Trail. The only exceptions to this closure include the owners of the Keystone Ranch, their express permitees, and BLM employees engaged in official duties.

Access to public lands lying south of the Deep Channel Truck Trail, and east of the Indian Valley Truck Trail from that segment of the Indian Valley Truck Trail lying between the present south gate of the Keystone Ranch, in section 35, T. # N., R. 97 W., 6th PM, and the intersection of the Indian Valley Truck Trail with the Deep Channel Truck Trail, is limited to the single "dismount point" located in the NW¼NW¼ of section 19, T. 3 N., R. 96 W., 6th PM. Access to public lands from this "dismount point" is hereby restricted to travel by foot or on horseback. The only exceptions to this latter restriction are BLM employees engaged in official duties, and those holding valid permits/rights-of-way for development of federal minerals.

EFFECTIVE DATE: These closures and restrictions shall be effective October 26, 1993, and will remain in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Vern Pholl, Supervisory Realty Specialist, or B. Curtis Smith, Area manager, BLM, White River Resource Area, P.O. Box 928, Meeker, Colorado 81641, (303) 878–3601.

Dated: October 14, 1993.

B. Curtis Smith,

Area Manager.

[FR Doc. 93–25784 Filed 10–6–93; 8:45 am]

BILLING CODE 4310–JB–M

[AZ–040–5700–10–AZA 28178]

Realty Action; Noncompetitive Sale of Public Lands; Arizona

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice.

SUMMARY: The following lands in Greenlee County, Arizona have been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713), at not less than the appraised fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

Gila and Salt River Meridian, Arizona

T. 3 S., R. 29 E.
Sec. 35, MS 4482.
Containing 85.417 acres, more or less.

The land described is hereby segregated from appropriation under the public land laws, including the mining

laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Phelps Dodge Morenci, Inc. If a determination is reached that the subject parcel contains no known mineral values, the mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests.

The patent, when issued, will contain certain reservations to the United States. Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the Safford District Office, Bureau of Land Management, 711 14th Avenue, Safford, Arizona 85546.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Safford District, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: October 7, 1993.

Frank L. Rowley,

Acting District Manager.

[FR Doc. 93-25696 Filed 10-19-93; 8:45 am]

BILLING CODE 4310-32-M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1032-0113), Washington, DC 20503, telephone 202-395-3470.

Title: Helium Distribution Contracts.

OMB approval number: 1032-0113.

Abstract: Respondents supply information which will be used by the Bureau of Mines Division of Helium Field Operations to (a) determine legitimacy of applicants for distribution contracts, (b) establish accountability of helium transfer between distributors, and (c) report annual sales, transfers, and purchases of Bureau helium as certification of compliance with 30 CFR part 602. The Bureau will use the information supplied on the three forms as described to implement and manage an effective helium distribution system in accordance with 30 CFR 602.

Bureau form number: 6-1575-A, 6-1580-A, and 6-1581-A.

Frequency: Annually.

Description of respondents: Industrial gas suppliers who elect to distribute Bureau of Mines helium.

Estimated completion time: ½ hour.

Annual responses: 76.

Annual burden hours: 38.

Bureau clearance officer: Alice J. Wissman (202) 501-9569.

Dated: September 30, 1993.

Hermann Enzer,

Acting Director, Bureau of Mines.

[FR Doc. 93-25685 Filed 10-19-93; 8:45 am]

BILLING CODE 4310-53-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, telephone 202-395-7340.

Title: RecTec Survey (Evaluation Questionnaire).

OMB Approval Number: Not yet assigned.

Abstract: This information collection request is being submitted for approval to collect information from a one-time survey. The survey is being disseminated to assist OSM in the preparation of RecTec by ascertaining the needs of our customers so that OSM can provide the readers of RecTec with information most useful to them.

Bureau Form Number: None.

Frequency: Once.

Description of Respondents: State regulatory authorities and Industry representatives.

Estimated Completion Time: 7 minutes.

Annual Responses: 1000.

Annual Burden Hours: 167.

Bureau Clearance Officer: John A. Trelease, 202-343-1475.

Dated: October 6, 1993.

Gene E. Krueger,

Acting Chief, Division of Technical Services.

[FR Doc. 93-25697 Filed 10-19-93; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-342]

Certain Circuit Board Testers; Commission Determination To Modify an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to modify the initial determination (ID) issued in the above-captioned investigation by the presiding administrative law judge (ALJ) on May 12, 1993, to delete language suggesting that the settlement agreement may not be in the public interest. In view of submissions by the parties demonstrating that the non-party suppliers of designated confidential business information (CBI) whose information will be retained by the parties either no longer consider their information to be confidential or consent to use of their CBI, as provided in the settlement agreement between the parties, with the understanding that the Commission will not enforce the protective order after the investigation is terminated, the Commission will not retain jurisdiction over the administrative protective order after termination of the investigation.

ADDRESSES: Copies of the nonconfidential version of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-2000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade

Commission, telephone 202–205–3104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: On September 25, 1992, Integri-Test Corp. (Integri-Test) filed a complaint and a motion for temporary relief with the Commission alleging violations of section 337 in the importation and sale of certain circuit board testers allegedly covered by certain claims of Integri-Test's U.S. Letters Patent 4,565,966. The notice of investigation instituting an investigation based on Integri-Test's complaint was published in the Federal Register on November 2, 1992. 57 FR 49490. Bath Scientific Ltd. of the United Kingdom and BSL North America of Massachusetts were named as respondents. Pursuant to Commission interim rule 210.24(e)(8)(19 CFR 210.24(e)(8)), the Commission also provisionally accepted Integri-Test's motion for temporary relief.

On January 11, 1993, the presiding ALJ issued an ID denying complainant's motion for temporary relief. The Commission determined to review the ID and to designate the temporary relief phase of the investigation "more complicated." 58 FR 7246 (Feb. 5, 1993). On March 17, 1993, the Commission denied complainant's motion for temporary relief. 58 FR 16202 (March 25, 1993).

On April 29, 1993, the private parties filed a joint motion to terminate the investigation based on a settlement agreement. The Commission investigative attorney (IA) conditionally supported the joint motion. On May 12, 1993, the ALJ granted the motion to terminate on the condition that the Commission would retain jurisdiction over the administrative protective order after termination of the investigation. On May 24, 1993, complainant filed a petition for review of ID. The IA responded to the petition on June 1, 1993; respondents did not file a response to the petition. On June 4, 1993, complainant filed a supplement to its petition for review. No agency or public comments were received.

On June 24, 1993, the Commission determined to review the ID because of concerns about the document retention provisions. The Commission requested the private parties to submit letters from all non-party suppliers of CBI stating either that the suppliers no longer consider their information to be confidential or that they consented to use of their CBI, as provided in the settlement agreement between the parties, with the understanding that the Commission will not enforce the protective order after the investigation is terminated. These submissions were received by July 14, 1993.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rules 210.53 and 210.56 (19 CFR 210.53 and 210.56).

By order of the Commission.

Issued: October 13, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–25754 Filed 10–19–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 701–TA–355 (Preliminary); Investigations Nos. 731–TA–659 and 660 (Preliminary)]

Grain-Oriented Silicon Electrical Steel From Italy and Japan

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, [2] pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Italy of grain-oriented silicon electrical steel [3] that are alleged to be subsidized by the Government of Italy. The Commission also determines, [4] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Italy and Japan of grain-oriented silicon electrical steel that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On August 26, 1993, petitions were filed with the Commission and the Department of Commerce by counsel on behalf of Allegheny Ludlum Corp., Pittsburgh, PA; Armco, Inc., Butler, PA; the Butler Armco Independent Union, Butler, PA; the United Steelworkers of America, Pittsburgh, PA; and the Zanesville Armco Independent Union, Zanesville, OH. The petitions allege that an industry in the United States is being materially injured and is threatened with further material injury by reason of allegedly subsidized imports from Italy and allegedly LTFV imports from Italy and Japan [5] of grain-oriented silicon electrical steel. Accordingly, effective August 26, 1993, the Commission instituted countervailing duty investigation No. 701–TA–355 (Preliminary) and antidumping investigations Nos. 731–TA–659 and 660 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of September 2, 1993 (58 FR 46650). The conference was held in Washington, DC, on September 16, 1993, and all persons who requested the opportunity were premitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on October 12, 1993. The views of the Commission are contained in USITC Publication 2686 (October 1993), entitled "Grain-Oriented Silicon Electrical Steel from Italy and Japan: Investigation No. 701–TA–355 (Preliminary) and Investigations Nos. 731–TA–659 and 660 (Preliminary)."

Issued: October 13, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–25753 Filed 10–19–93; 8:45 am]

BILLING CODE 7020–02–P–M

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Watson did not participate in the investigation concerning Italy.

[3] The products covered by Commerce's investigations are grain-oriented silicon electrical steel, which are flat-rolled alloy steel products containing by weight at least 0.6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, of a thickness of no more than 0.560 millimeters, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness. The subject products are provided for in subheadings 7225.10.00, 7225.30.70, 7225.40.70, 7225.50.80, 7225.90.00, 7226.10.10, 7226.10.50, 7226.91.70, 7226.91.80, 7226.92.50, 7226.92.70, 7226.92.80, 7226.99.00, 7228.30.80, 7228.60.60, and 7229.90.10 of the Harmonized Tariff Schedule of the United States (HTS).

[4] Vice Chairman Watson did not participate in the investigation concerning Italy.

[5] Armco, the Butler Armco Independent Union, and the Zanesville Armco Independent Union are not petitioners in the antidumping investigation concerning Japan.

[Investigation No. TA-406-13]

Honey From China; Import Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation under section 406(a) of the Trade Act of 1974 (19 U.S.C. 2436(a)) and scheduling of a public hearing in connection therewith.

SUMMARY: Following receipt on October 6, 1993, of a request from the United States Trade Representative for an investigation under section 406(a) of the Trade Act of 1974, the Commission instituted investigation No. TA-406-13 to determine, in the case of imports of honey [1] from China, whether market disruption exists with respect to an article produced by a domestic industry. Section 406(e)(2)(A) of the act states that market disruption exists within a domestic industry whenever "imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry." The Commission will make its injury and, if necessary, its remedy determinations in this investigation by January 7, 1994.

EFFECTIVE DATE: October 6, 1993.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202-205-3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Participation in the Investigation

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on December 2, 1993, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 23, 1993. All persons desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on November 29, 1993, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by §§ 201.6(b)(2) and 201.13(f) of the Commission's rules.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is November 30, 1993. Parties may also file posthearing briefs. The deadline for filing posthearing briefs is December 7, 1993. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before December 7, 1993. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of § 201.6 of the rules.

In accordance with § 201.16(c) of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Remedy

Parties are reminded that no separate hearing on the issue of remedy will be held. Those parties wishing to present arguments on the issue of remedy may do so orally at the hearing or in their prehearing or posthearing briefs or other written submissions.

Authority: This investigation is being conducted under authority of § 406 of the Trade Act of 1974. This notice is published pursuant to § 206.3 of the Commission's rules.

By order of the Commission.

Issued: October 15, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-25776 Filed 10-19-93; 8:45 am]

BILLING CODE 7020-02-P-M

[1] The honey products included in this investigation are imports of natural honey, artificial honey mixed with natural honey, and preparations of natural honey, provided for in heading 0409 and subheadings 1702.90 and 2106.90 of the Harmonized Tariff Schedule of the United States (HTS).

[Investigation No. 731-TA-663 (Preliminary)]

Certain Paper Clips From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-663 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China (China) of certain paper clips, provided for in subheading 8305.90.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value.[1] The Commission must complete preliminary antidumping investigations in 45 days, or in this case by November 29, 1993.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: October 13, 1993.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202-205-3183), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the

[1] For purposes of this investigation, "certain paper clips" are defined as paper clips made wholly of wire of base metal, whether or not galvanized, whether or not plated with nickel or other base metal, with a wire diameter between 0.64 and 1.91 millimeters, the foregoing including, without limitation, all paper clips commercially referred to as "No. 1 clips," "No. 3 clips," "jumbo clips," and "giant clips," and further including, without limitation, all such paper clips reported under HTS statistical reporting number 8305.90.3010.

Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on October 13, 1993, by ACCO USA, Inc., Wheeling, IL, and Noesting Incorporated, Bronx, NY.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on November 3, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jonathan Seiger (202–205–3183) not later than November 1, 1993, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before November 8, 1993, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: October 15, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–25812 Filed 10–19–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–464 (Final)]

Sparklers From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Final negative determination of critical circumstances.

SUMMARY: The Commission hereby gives notice of its final negative critical circumstances determination in investigation No. 731–TA–464 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) regarding imports from China of sparklers, provided for in subheading 3604.10.00 of the Harmonized Tariff Schedule of the United States.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen McLaughlin (202–205–3095), Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 1993, the Department of Commerce notified the Commission of an amendment to its final determination of sales at less than fair value and outstanding antidumping order, in accordance with a remand from the Court of International Trade in the above-referenced case. 58 FR 40624 (July 29, 1993). The amended final determination includes an affirmative critical circumstances determination as to Jiangtxi Native Products Import & Export Corp. and all other exporters of sparklers, excluding Guangxi Native Products Import & Export Corp. and Hunan Native Products Import & Export Corp. In their original final determination, Commerce had made a negative determination on critical circumstances.

The original petition was filed on July 2, 1990, by Elkton Sparkler Co., North East, MD and Diamond Sparkler Co., Youngstown, OH. Commerce made its original final determination regarding sales of imports at LTFV and no critical circumstances effective April 26, 1991. The Commission made its original final determination on June 11, 1991. On May 7, 1993, the Court (CIT) affirmed the results of remand in this case.

The Commission has been informed by the U.S. Customs Service that there are no unliquidated entries of sparklers dating from the People's Republic of China for the period September 17, 1990–December 17, 1990 (the period 90 days prior to suspension of liquidation) and further that there were no imports of sparklers from Jiangtxi for that period. The Commission published a notice of institution of its final critical circumstances investigation on September 10, 1993. The notice indicated that there were no imports upon which retroactive duties could be assessed, but provided an opportunity for interested parties to file written submissions on the issue of critical circumstances. No written submissions were filed. Accordingly, based upon the information of record, the Commission determines that retroactive imposition of the antidumping duties does not appear necessary in order to prevent material injury from recurring. 19 U.S.C. 1673d(b)(4)(A).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.28 of the Commission's rules.

Issued: October 12, 1993.

By order of the Commission.

Donna Koehnke,

Secretary.

[FR Doc. 93-25752 Filed 10-19-93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 332-135]

Synthetic Organic Chemicals (SOC) Reports

AGENCY: United States International Trade Commission.

ACTION: Notice of format and availability changes.

EFFECTIVE DATE: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: James A. Emanuel or John J. Gersic, Energy, Chemicals, and Textiles Division, Office of Industries (telephone 202-205-3367 and 202-205-3342, respectively).

BACKGROUND: Notices were published in the **Federal Register** of July 17, 1991 (56 FR 32590), and October 17, 1991 (56 FR 52059), soliciting public comment on certain changes to the format and reporting requirements for the Commission's annual Synthetic Organic Chemicals, United States Production and Sales report. In addition, meetings were held with interested trade associations to discuss proposed changes and a set of three sample reports detailing the changes proposed were prepared and distributed to trade associations and certain interested organizations. Comments on the proposed changes were received from individuals and industry associations and have been incorporated to the extent feasible.

The principal change to the annual report will be from a format of 15 largely end-use sections, each with a separate table for statistics and a listing of individual products reported along with the reporting companies for each, to a single consolidated table in the format of the Harmonized Tariff Schedule of the United States. The single table will list products individually, showing statistics on production and/or sales where publication will not reveal the operations of individual companies and the name of each reporting company. Because each product will be addressed individually, there should be little difference in the number of chemicals published that show separate statistics using either the old report format or the new format. However, aggregations of data by chemical groupings used in the old format that do not have an equivalent grouping in the HTS format will not be shown.

Comments on the new version of the annual report are welcome at anytime. After the Commission has published three editions of the annual report in the new format, comments on possible additional technical changes to the format will again be solicited and considered.

In the future, the Government Printing Office (GPO) will sell both the annual and quarterly SOC reports. The annual report for 1992 and the remainder of the quarterly reports for 1993 will continue to be mailed free. However, the GPO will sell the quarterly reports beginning with the report covering data for the first quarter of 1994 and the annual report for 1993, which is scheduled for publication in the fall of 1994. Recipients who are currently sent these publications free by the Commission will be notified of this change in the next edition of each of these reports. The cost of each annual SOC report will be determined each year by GPO. However, the quarterly SOC report will be sold on a subscription basis. The Master Stock No. for the SOC Quarterly Report is 749-001-000003 and the List ID is PSOC. The subscription cost for a calendar year (four quarterly issues plus a full-year recap) is $8.50 ($10.65 foreign). The single-copy price for quarterly issues is $2.25 domestic ($2.81 foreign), and the single-copy price for the issue covering data for the full year on products in the quarterly report is $1.00 domestic ($1.25 foreign). The address for mail orders is Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Credit card orders may be placed by phone at 202-783-3238.

Because of public requests to make the annual SOC report available electronically, beginning with the annual report for 1992 after its release in late 1993 a version of the report in at least ASCII format will be made available for downloading from a Commission-operated computer bulletin board. Quarterly SOC report data has been available electronically from the bulletin board since 1987. The bulletin board may be accessed without charge at phone number 202-205-1948 at 1200 or 2400 baud, 8 bits, 1 stop bit, no parity.

Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810.

By order of the Commission.

Issued: October 15, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-25755 Filed 10-19-93; 8:45 am]

BILLING CODE 7020-02-P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-167; Sub-No. 1123X]

Consolidated Rail Corp. Abandonment Exemption; in Clinton and Carroll Counties, IN

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon 13.8± miles of rail line from approximately milepost 37.2± at Frankfort to approximately milepost 51.0± at Bringhurst, in Clinton and Carroll Counties, IN.

Conrail has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). The address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 19, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made before the effective date of the notice of exemption. See

Continued

file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by November 1, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 9, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: John J. Paylor, Esq., Associate General Counsel, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101-1416.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by October 25, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 8, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-25775 Filed 10-19-93; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Final Judgment by Consent Pursuant to the Safe Drinking Water Act; United States and State of Montana v. Butte Water Co.

In accordance with Department of Justice policy, 28 CFR 50.7, notice is hereby given that on September 10, 1993 a Consent Decree in *United States and State of Montana* v. *Butte Water Company,* No. CV 91-100-BU-PGH, was lodged with the United States District Court for the District of Montana.

The United States filed its Complaint in this action on December 31, 1991, and its First Amended Complaint on January 21, 1992, against Butte Water Company seeking injuctive relief and civil penalties of up to $25,000 per day of violation under sections 1414(b) and 1431 of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. 300g-3(b) and 300i. The State of Montana also filed a complaint in this action against Butte Water Company seeking civil penalties of up to $10,000 per day of violation, cost, and attorneys fees under the Montana Public Water Supply Act ("MPWSA"), Mont. Code Ann. tit. 75, ch. 6, pt. 1. The United States and the State allege that Butte Water Company has violated the SDWA, and MPWSA, and the national primary drinking water regulations, and that the violations resulted in an imminent and substantial endangerment to the health of persons who consume drinking water from the Butte water system. The United States' and the State's claims for injunctive relief have been resolved in a previous settlement with the new owner and operator of the Butte water system, Silver Bow Water, Inc. and the City-County of Butte-Silver Bow. *United States and State of Montana* v. *Silver Bow Water, Inc. and City-County of Butte-Silver Bow,* No. CV 92-26-BU-PGH (D. Mont. consent decree entered May 15, 1992.) See 57 FR 17930 (Apr. 28, 1992). Pursuant to that settlement, two drinking water filtration plants are under construction on an expedited schedule, and other measures are being implemented to mitigate turbidity in the Butte water system until the filtration plants are completed.

Under the proposed Consent Decree, Butte Water Company will pay a civil penalty of $900,000.00 in settlement of the United States' and the State's claims. The penalty will be divided between the United States and the State, with $720,000.00 to be paid to the United States and $180,000.00 to be paid to the State. A fourteen (14) day comment period on the proposed consent decree was provided from September 13, 1993 to September 27, 1993.

The Department of Justice will also receive comments relating to the proposed Consent Decree for an additional period of fourteen (14) days from the date of publication of this notice. Comments should refer to *United States* v. *Butte Water Company,* No. CV 91-100-BU-PGH (D. Mont.), DOJ Ref. No. 90-5-1-1-3751 and should be addressed to the Acting Assistant Attorney General for the Environment and Natural Resources Division. Comments sent by U.S. Mail should be sent to the U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. Comments sent by overnight mail should be sent to the U.S. Department of Justice, room 12015, 1425 New York Avenue, Washington, DC 20005. Comments sent by Telefax should be sent to Telefax No. (202) 616-6583 using Voice Confirmation No. (202) 514-1111.

The proposed Consent Decree may be examined at any of the following offices: (1) The Office of the United States Attorney for the District of Montana, Butte Division, 167 Federal Building, Butte, Montana 59701; (2) the U.S. Environmental Protection Agency, Montana Operations Office, Federal Building, 301 South Park Street, Helena, Montana 59626; (3) the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Denver, Colorado 80202; and (4) the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624-0892. Copies of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. Please enclose a check for $2.50 ($0.25 per page reproduction charge) payable to "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-25791 Filed 10-19-93; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; United States v. Petro Power Insulation, Inc. et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 20, 1993 a proposed partial consent decree in *United States* v. *Petro Power Insulation, Inc. et al.,* Civil Action No. C-91 1490 MHP, was lodged with the Untied States District Court for the Northern District of California. This is an action brought pursuant to the Clean Air Act, 42 U.S.C. 7401-7632, and the National Emissions Standards for Hazardous Air Pollutants ("NESHAP") for asbestos, promulgated under Section 112 of the Act, 42 U.S.C. 7412. Under the terms of the proposed partial consent decree, the settling defendant Gaylord Container Corp.

Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt or Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use statements as long as its retains jurisdiction to do so.

("Gaylord") agrees to pay a civil penalty of $15,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20530. Comments should refer to *United States v. Petro Power Insulation, Inc. et al.*, D.O.J. Ref. 90–5–2–1–1562.

The proposed partial consent decree may be examined at the Office of the Assistant United States Attorney, Northern District of California, 450 Golden Gate Avenue, San Francisco, California 94102, and at the Consent Decree Library, 1120 G Street, NW., Washington, DC 20005 (202–624–0892). A copy of the proposed partial consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., Washington, DC 20005. In requesting a copy by mail, please enclose a check in the amount of $6.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–25790 Filed 10–19–93; 8:45 am]

BILLING CODE 4410–01–M

Federal Bureau of Investigation

National Stolen Auto Part Information System Federal Advisory Committee; Meeting

The National Stolen Auto Part Information System (NSAPIS) Federal Advisory Committee will meet on November 18–19, 1993, from 9 a.m. until 5 p.m., at the Dulles Airport Marriott, 333 West Service Road, Chantilly, Virginia, telephone 703/471–9500, to formulate recommendations to the Attorney General, on the design and implementation of the National Stolen Auto Part Information System mandated by Public Law 102–519.

In addition to discussion of these matters, the Committee will discuss the relationship of the NSAPIS to the National Crime Information Center (NCIC) System, and the NCIC Vehicle database, and will discuss the design and implementation of a system to identify whether junk or salvage vehicles are stolen.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public may file a written statement concerning the National Stolen Auto Part Information System or related matters with the Committee, before or after the meeting, by sending same to the Chairman/Designated Federal Employee. Anyone wishing to address this session of the meeting should notify the Designated Federal Employee, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or a hand-delivered note. It should contain the requestor's name; corporate designation, consumer affiliation, or Government designation; along with a short statement describing the topic to be addressed; and the time needed for presentation. A nonmember requestor will ordinarily be allowed not more than 15 minutes to present a topic, unless specially approved by the Chairman.

Inquires may be addressed to the Chairman/Designated Federal Employee, Mr. David F. Nemecek, Inspector-Deputy Assistant Director, CJIS Division, FBI, 10th and Pennsylvania Avenue, Northwest, Washington, DC 20535, telephone (202) 324–8920.

Dated: October 13, 1993.

David F. Nemecek,

Inspector-Deputy Assistant Director, Designated Federal Employee.

[FR Doc. 93–25671 Filed 10–19–93; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Office of the Secretary

Commission on the Future of Worker-Management Relations; Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of public meeting.

SUMMARY: The Commission on the Future of Worker-Management Relations was established in accordance with Federal Advisory Committee Act (FACA) Public Law 92–463. Pursuant to section 10(a) of FACA, this is to announce that the Commission will meet at the time and place shown below:

Time and Place: The meeting will be held on Monday, November 8, 1993 from 10 a.m. to 4:30 p.m. in the Department of Labor Auditorium, 200 Constitution Avenue, NW., Washington, DC.

Agenda: The agenda for the meeting is as follows:

The day will be devoted to presentations on the questions posed in the mission statement of the Commission which are:

1. What (if any) new methods or institutions should be encouraged, or required, to enhance workplace productivity through labor-management cooperation and employee participation?

2. What (if any) changes should be made in the present legal framework and practices of collective bargaining to enhance cooperative behavior, improve productivity, and reduce conflict and delay?

3. What (if anything) should be done to increase the extent to which workplace problems are directly resolved by the parties themselves, rather than through recourse to state and federal courts and government regulatory bodies?

Presentations will be made on these questions in the morning from 10 a.m. to 12:30 p.m. by spokespersons for organized labor.

Presentations will be made on these questions in the afternoon from 1:30 p.m. to 4 p.m. by spokespersons for major business organizations and companies.

The sessions will include questions and exchanges of views with the Commission Members, with additional discussion by the Commission Members from 4 p.m. to 4:30 p.m. when the hearing is adjourned.

This discussion will be continued at the December 15, 1993 meeting of the Commission with other spokespersons for labor, small business and other interested parties.

Public Participation: The Commission will be in session from 10 a.m. to 12:30 noon when it will recess for lunch and will return at 1:30 p.m. Seating will be available to the public on a first-come, first-served basis. Handicapped individuals wishing to attend should contact the Commission to obtain appropriate accommodations. Individuals or organizations wishing to submit written statements should send 11 copies to Mrs. June M. Robinson, Designated Federal Official, Commission on the Future of Worker-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219–9148.

Signed at Washington, DC this 14th day of October, 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 93–25749 Filed 10–19–93; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Job Training Partnership Act: Native American Employment and Training Council; Meeting

Puruant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and section 401(h)(1) of the Job Training Partnership Act (JTPA), as amended (29 U.S.C. 1671(h)(1)), notice is hereby given of a meeting of the Native American Employment and Training Council.

Time and date: The meeting will begin at 9 a.m. on November 4, 1993, and continue until close of business that day; and will reconvene at 9 a.m. on November 5, 1993 and

adjourn at 3 p.m. that day. From 3 to 5 p.m. on November 4 will be reserved for participation and presentations by members of the public.

Place: Rooms N–3437 A, B and C, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Status: The meeting will be open to the public.

Matters to be considered: The agenda will focus on the following topics: (1) Selection of Council chair and vice chair; (2) incorporation of statutory requirements in the current section 401 regulations; (3) ETA communications network; (4) implementation of the Indian Employment Training and Related Services Demonstration Act of 1992 (Pub. L. 102–477); (5) technical assistance; and (6) report of the technical work group on the section 401 standardized participant record.

Contact person for more information: Charles Atkinson, Acting Chief, Division of Indian and Native American Programs, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., room C–4524, Washington, DC 20210. Telephone: 202–219–5904 (this is not a toll-free number). Mr. Atkinson is the Designated Federal Official for the Council.

Signed at Washington, DC, this 14th day of October, 1993.

Doug Ross,

Assistant Secretary of Labor.

[FR Doc. 93–2570 Filed 10–19–93; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–081]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Acting Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by November 19, 1993. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Acting Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Ms. Eva L. Layner, Acting NASA Agency Clearance Officer, Code JTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0063), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 358–1374.

Reports

Title: NASA Safety Reporting System (NSRS).

OMB Number: 2700–0063.

Type of Request: Extension.

Frequency of Report: As Required.

Type of Respondent: Individuals or households, businesses or other for-profit, federal agencies or employees.

Number of Respondents: 75.

Responses per Respondent: 1.

Annual Responses: 19.

Hours per Response: .25.

Annual Burden Hours: 19.

Abstract-Need/Uses: Form will be used by NASA employees and NASA contractor employees to voluntarily and confidentially report to an independent agent any safety concerns or hazards pertaining to any NASA program or project.

Dated: October 12, 1993.

Eva L. Layne,

Acting Chief, IRM Policy and Acquisition Management Office.

[FR Doc. 93–25727 Filed 10–19–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL INSTITUTE FOR LITERACY

National Institute for Literacy Advisory Board; Meeting

AGENCY: National Institute for Literacy Advisory Board, National Institute for Literacy.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Institute for Literacy Advisory Board (Board). This notice also describes the function of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATE AND TIME: November 9, 1993, 10 a.m. to 3 p.m.

ADDRESSES: National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Sharyn M. Abbott, Acting Executive Officer, National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006. Telephone (202) 632–1500.

SUPPLEMENTARY INFORMATION: The Board is established under Section 384 of the Adult Education Act, as amended by title I of Pub. L. 102–73, the National Literacy Act of 1991. The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute. Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Director of the Institute. In addition, the Institute consults with the Board on the award of fellowships.

The Board will meet in Washington, DC on November 9, 1993 from 10 a.m. to 3 p.m. The meeting of the Board is open to the public. The agenda includes an update of current activities and a review of the Institute's progress.

Records are kept of all Board proceedings and are available for public inspection at the National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006 from 8:30 a.m. to 5 p.m.

Lilian S. Dorka,

Acting Interim Director, National Institute for Literacy.

[FR Doc. 93–25807 Filed 10–19–93; 8:45 am]

BILLING CODE 6055–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* Certification of Medical Examination by Facility Licensee.

3. *The form number if applicable:* NRC Form 396.

4. *How often the collection is required:* Upon application for an initial operator license, and every six years for the renewal of operator or senior operator licenses.

5. *Who will be required or asked to report:* Facility employers of applicants for operators licenses.

6. *An estimate of the number of responses:* 1700 annually.

7. *An estimate of the total number of hours needed to complete the requirement or request:* Reporting: 425 hours (.25 hours per response), Recordkeeping: 500 hours (.10 hours per response).

8. *An indication of whether section 3504(h), Public Law 96–511 applies:* Not applicable.

9. *Abstract:* NRC Form 396 establishes the procedure for transmitting information to the NRC regarding the medical condition of applicants for initial or renewal operator licenses and for the maintenance of medical records for all licensed operators. The information is used to determine whether the physical condition and general health of applicants for operators licenses is such that the applicant would not be expected to cause operational errors endangering public health and safety.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

Comments and questions should be directed by mail to the OMB reviewer: Tim Hunt, Office of Information and Regulatory Affairs (3150–0024), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone (202) 395–3084.

The NRC Clearance Officer is Brenda J. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 13th day of October, 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–2570 Filed 10–19–93; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35)

1. *Type of submission, new revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions".

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* On occasion. Upon submittal of an application for construction permit, operating license, operating license renewal, early site review, design certification review, decommissioning review, manufacturing license, materials license, or upon submittal of a petition for rulemaking.

5. *Who will be required or asked to report:* Licensees and applicants requesting approvals for actions proposed in accordance with the provisions of 10 CFR parts 30, 32, 33, 34, 35, 36, 39, 40, 50, 52, 54, 60, 61, 70 and 72.

6. *An estimate of the number of responses:* 27 annually.

7. *An estimate of the total number of hours needed annually to complete the requirement or request:* 29,099 (approximately 1,090 hours per response).

8. *An indication of whether section 3504(h), Public Law 96–511 applies:* Not applicable

9. *Abstract:* 10 CFR part 51 of the NRC'S regulations specifies information and data to be provided by applicants and licensees so that the NRC can make determinations necessary to adhere to the policies, regulations, and public laws of the United States, which are to be interpreted and administered in accordance with the policies set forth in the National Environmental Policy Act of 1969, as amended.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20037.

Comments and questions should be directed to the OMB reviewer: Tim Hunt, Office of Information and Regulatory Affairs (3150–0021), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8232.

Dated at Bethesda, Maryland, this 13th day of October, 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–24720 Filed 10–19–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458]

Gulf States Utilities Co., Cajun Electric Power Cooperative, Inc. River Bend Station, Unit 1; Notice of No Significant Antitrust Changes and Time for Filing Request for Reevaluation

The Director of the Office of Nuclear Reactor Regulation has made a finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensee's activities or proposed activities have occurred subsequent to the antitrust operating license review of the River Bend Station by the Attorney General and the Commission. The finding is as follows:

Under section 105 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2135 (Act), 10 CFR 50.80 and 50.90, the Nuclear Regulatory Commission (NRC or Commission) requires an antitrust review of changes in ownership or operator of a power production facility after initial licensing. In situations where requests for a change in ownership or operator have been received after issuance of an operating license for such a facility, the staff has conducted, with the Commission's approval, a significant change review to determine whether the licensee's activities create or tend to create a situation inconsistent with the antitrust laws. The Commission delegated the authority to make the significant change determination to the Director, Office of Nuclear Reactor Regulation (NRR).

Based upon an analysis of the extensive comments received, the record and findings in other regulatory proceeding involving the proposed merger of Gulf States Utilities Company (GSU) and Entergy Corporation (Entergy), and after consultation with the Department of Justice, the staffs of the Inspection and Licensing Policy Branch of NRR and the Office of the General Counsel (hereafter, "staff"), have concluded that the changes in GSU's activities which have been identified by the staff do not constitute significant changes as envisioned by the Commission in its *Summer*[1] decision. The conclusion of the staff analysis is as follows:

After review of the filings in this proceeding, the record and testimony developed in the related proceedings at the Federal Energy Regulatory Commission and other public information, the staff determined that the changes in GSU's activities since the previous antitrust review, which may have competitive implications in the bulk power services market in the south central portion of the country, should be addressed in the context of a petition pursuant to 10 CFR 2.206 requesting initiation of an antitrust compliance proceeding, not in the instant significant change proceeding. Consequently, the staff recommends that the Director of the Office of Nuclear Reactor Regulation issue a post OL no significant antitrust change finding pursuant to GSU's request to transfer control of ownership in River Bend from GSU to Entergy. The staff further has determined that as a result of the inclusion of a license condition prohibiting EOI's marketing or brokering of power or energy from the River Bend facility that the proposed transfer of operating responsibility of River Bend from ESU to EOI presents no relevant antitrust issues to the instant licensing review process.

Based upon the staff analysis, it is my finding that there have been no "significant changes" in the licensee's activities or proposed activities since the completion of the antitrust operating license review of the River Bend Station.

Signed on October 15, 1993, by Thomas E. Murley, Director of the Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding, may file, with full particulars, a request for reevaluation with the Director of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 30 days of the initial publication of this notice in the **Federal Register**. Request for reevaluation of the no significant change determination shall be accepted after the date when the Director's finding becomes final, but before the issuance of the proposed license amendment, only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

Dated at Rockville, Maryland, the 15th day of October 1993.

For the Nuclear Regulatory Commission.

Anthony T. Gody,

Chief, Inspection and Licensing Policy Branch, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 93–25887 Filed 10–19–93; 8:45 am]

BILLING CODE 7590–01–1

[1] *South Carolina Electric and Gas Company and South Carolina Public Service Authority,* (Virgil C. Summer Nuclear Station, Unit 1), CLI–80–28, 11 NRC 817, 824 (1980)

[Docket No. 50–192]

The University of Texas at Austin (The University of Texas at Austin TRIGA Mark I Research Reactor); Order Terminating Facility License

By application dated May 3, 1985, as supplemented on December 2, 1985, the University of Texas at Austin (UT or the licensee) requested from the U.S. Nuclear Regulatory Commission (the Commission) authorization to dismantle, decommission, and dispose of the component parts of the UT TRIGA Mark I research reactor located in Austin, Texas. A "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License" was published in the **Federal Register** on May 31, 1985 (50 FR 23207). By Order dated March 9, 1987, the Commission authorized dismantling of the facility and disposition of component parts as proposed in the decommissioning plan of the licensee. By letter dated December 17, 1992, as supplemented on March 22 and May 3, 1993, the licensee submitted its report for the final disposition of the facility.

The reactor fuel has been removed from the core and shipped to a Department of Energy (DOE) facility. The reactor facility has been completely dismantled and all requirements pertaining to residual radioactivity, personnel and external radiation exposure, and fuel disposition have been met. Confirmatory radiological surveys verified that the facility met the recommended regulatory guidance for release of the facility for unrestricted use. Accordingly, the Commission has found that the facility has been dismantled and decontaminated pursuant to the Commission's Order dated March 9, 1987. Satisfactory disposition has been made of the component parts and fuel in accordance with the Commission's regulations in title 10 of the Code of Federal Regulations, (10 CFR) chapter I, and in a manner not inimical to the common defense and security, or to the health and safety of the public. Therefore, on the basis of the application filed by UT and pursuant to sections 104, 161b, and 161i, of the Atomic Energy Act of 1954, as amended, and in 10 CFR 50.82(f), *it is hereby ordered,* That Facility License No. R–92 is terminated as of the date of this Order. In accordance with 10 CFR part 51, the Commission has determined that the issuance of this termination Order will have no significant impact on the quality of the human environment. The environmental assessment and finding of no significant impact was published in the **Federal Register** on October 13, 1993 (58 FR 53001).

For further details with respect to this action see (1) the application for termination of Facility License No. R–92, dated May 3, 1985, as supplemented on December 17, 1992, March 22 and May 3, 1993, (2) the Commission's safety evaluation related to the termination of the license, (3) the environmental assessment and finding of no significant impact, and (4) the "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License," published in the **Federal Register** on May 31, 1985 (50 FR 23207). Each of these items is available for public inspection at the Commission Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Copies of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Operating Reactor Support.

Dated at Rockville, Maryland, this 13th day of October 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93–25718 Filed 10–19–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Final Subcontract Reporting System Test Plan and Reporting Form

AGENCY: Executive Office of the President, Office of Management and

Budget (OMB), Office of Federal Procurement Policy.

ACTION: Final Subcontract Reporting System Test Plan and Reporting Form.

SUMMARY: The Subcontract Reporting System Test Plan and Reporting Form are being issued to implement section 202(d) of the Small Business Credit and Business Opportunity Enhancement Act of 1992, (Pub. L. 102–366). Section 202(d) requires that the Administrator for Federal Procurement Policy conduct a limited test of a simplified system to collect data on the participation of small business concerns (including small business concerns owned and controlled by socially and economically disadvantaged individuals) as other than prime contractors. The system is limited to collecting subcontract data on prime contracts for architectural and engineering (A&E) services (including surveying and mapping) that are procured under 40 U.S.C. 541 *et seq.* (the Brooks A–E Act). The system is applicable only to the Environmental Protection Agency, the National Aeronautics and Space and Administration, the United States Army Corps of Engineers (Civil Works), and the Department of Energy.

The primary purpose of this limited test is to demonstrate whether the actual rate of small business participation on A&E prime contracts is substantially higher than is now being reflected in data captured by the Government's existing procurement data system. Also, this new system is intended to collect subcontracting data under a broader range of A&E contract awards than are covered by the existing reporting requirements of Public Law 95–507.

FOR FURTHER INFORMATION CONTACT: Linda G. Williams, Deputy Associate Administrator, (202) 395–3302.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to the Small Business Act, prime contractors and subcontractors (except small business firms) that receive one or more contracts over $500,000 ($1 million for construction) are required to submit a subcontracting plan with goals for using small business and small disadvantaged business concerns as subcontractors under Federal prime contracts, and to report accomplishments against the goals. Concerns have been expressed that small business firms actually receive more subcontracting opportunities than are being reported under the existing reporting system. As part of the Small Business Competitiveness Demonstration Program, OFPP is required to conduct a limited test of a simplified system that collects data on the rate of small business and small disadvantaged business participation at the subcontract level under Federal prime contracts for A&E services (including surveying and mapping).

A proposed Subcontracting Reporting System Text Plan and Reporting Form were published in the **Federal Register** for public review and comment on April 16, 1993 (58 FR 19856). Comments were received from two Government and four private organizations. All comments were reviewed, and where warranted, changes have been made. The main issues and concerns raised in the comments are summarized below:

1. *Relationship to Current Reporting Requirements Under Public Law 95–507.* Comments from both Government organizations suggested that we add language to clarify that the Subcontracting Reporting System Test Plan and Reporting Form do not affect, and are independent of, current reporting requirements in Public Law 95–507 and FAR Section 52.219–9 (which require that prime contractors and subcontractors, except small businesses, that receive one or more contracts over $500,000 ($1 million in construction) submit a subcontracting plan with goals for using small business and small disadvantaged business concerns as subcontractors under Federal prime contracts and to report accomplishments against the goals). These comments were accepted.

2. *Definition of United States Army Corps of Engineers (Civil Works).* One Government organization commented that although section 202(d) of Public Law 102–366 specifies that data shall be collected from the United States Army Corps of Engineers (Civil Works), there in fact is no such entity. The commenter recommended that we add language to indicate that United States Army Corps of Engineers (Civil Works) means purchases of A&E services by the Army Corps of Engineers in support of its civil works function. This comment was accepted.

3. *Coverage of Joint Ventures.* One private organization suggested that we include joint ventures as prime contractors that are covered by the reporting requirements of the system. This commenter pointed out that the legislative history of Public Law 102–366 indicates that the system should cover joint venture arrangements at the prime contract level. This comment was accepted. For purposes of this Reporting System, joint ventures will be considered large business Federal prime contractors.

4. *Expanded Coverage.* One private organization suggested that system coverage be expanded to include two additional agencies and one additional industry. This commenter pointed out that Public Law 102–366 gives OFPP the authority to add industries and agencies to those specifically covered by the statute. This comment was not accepted. The system is established as a limited test and specifically was narrowed from a broader requirement contained in Public Law 100–656 that subsequently was repealed due to its unmanageability. Accordingly, we do not think inclusion of additional agencies or industries is appropriate at this time. If experience shows that the current coverage could be expanded without being unduly burdensome, we will consider adding additional industries and/or agencies at a later date.

5. *Exclusion of Small and Small Disadvantaged Businesses.* One private organization commented that there is no authority to exclude small and small disadvantaged businesses from the reporting requirements established by the system. This commenter believes that such businesses should be covered in order to capture the full range of subcontract awards to small businesses. This comment was not accepted. Public Law 102–366 gives OFPP broad authority to "develop and implement a simplified" data collection system. Excluding small and small disadvantaged businesses from the system reporting requirements avoids saddling small and small disadvantaged businesses with administratively burdensome and costly reporting requirements; most such businesses do not have systems in place to collect the necessary data since they are excluded from the reporting requirements of Public Law 95–507.

6. *Implementation Should Be Delayed Until Cost Impact Can Be Determined.* One private organization commented that the system will require reporting and oversight of subcontracts by prime contractors substantially beyond current requirements and will necessitate increased costs for additional manpower and systems implementation. The commenter suggested that the plan not be implemented until the cost impact can be determined. This comment was not accepted. The system is mandated by Public Law 102–366, and as previously discussed, is a more restricted version of a broader requirement contained in Public Law 100–656 that was subsequently repealed because it was deemed to be unduly burdensome. Further, there is no practical way to determine in advance

the cost of implementing the system. We do note, however, that another private organization commented that it does not anticipate that the system will place any undue burdens on A&E prime contractors (the only prime contractors covered by the system). This organization based its conclusion on the fact that coverage is limited to solicitations covered by the Brooks A–E Act, issued by only four Government agencies, and the fact that many contractors are already required to report subcontracting activity under Public Law 95–507. This commenter states that a survey of its members determined that collection of subcontract data as required by the system would not pose hardships on A&E prime contractors.

7. *Exclusion of Subcontracts with Non-Profits and Educational Institutions.* One Government organization questioned the exclusion of subcontracts with non-profits and educational institutions from the system reporting requirements. This commenter stated that exclusion of these groups is not consistent with existing requirements under Public Law 95–507 for subcontracting plans. However, we note that the SF 294 Form, "Subcontracting Report For Individual Contracts" (FAR 53.301–294), which is used to collect subcontract data under a subcontracting plan established pursuant to Public Law 95–507, only requires reporting of subcontract awards to business "concerns." The definition of concern at FAR 19.001 is "any business organized for profit * * *." Further, exclusion of non-profits and educational institutions is consistent with the coverage of the Small Business Competitiveness Demonstration Program, which does not count prime contract awards to non-profits and educational institutions toward attainment of the small business goals established by the Program. Since subcontracting awards reported under the system will count toward attainment of goals under the Demonstration Program, coverage between the two should be consistent.

8. *Criteria for Determining "Substantially Higher" Rate of Small Business Participation.* The stated purpose of the system is to determine whether the actual rate of small business participation on A&E prime contracts is "substantially higher" than is now reflected in data captured by the Government's existing data collection system. One Government organization suggested that we should establish criteria for determining "substantially higher." This comment was not accepted. We do not think it is practical to establish such criteria in advance. Rather, we believe we should compare and analyze data collected before and after the test, and then make a determination as to whether the change in performance is significant. This may require subjective judgements, and consideration of possible alternative interpretations of the data.

9. *Coverage Should Be Limited To Standard Industrial Codes Covered by the Small Business Competitiveness Demonstration Program.* One Government and one private organization commented that system coverage should be limited to subcontracts awarded in one of the standard industrial codes covered by the Small Business Competitiveness Demonstration Program. These comments were not accepted. We do not believe coverage should be limited because most subcontractors are not familiar with, and do not have access to, the codes. Therefore, we determined that any subcontract needed for prime contract performance, irrespective of the product or service provided, should be reported.

10. *General.* Other comments accommodated in the final test plan include:

—The addition of the words "if needed" in the first sentence of test plan paragraph IV.C. to indicate that a procedure for the collection by the OSDBU of the hardcopy Forms XXX from the contracting office need be established only if agency procedures do not otherwise provide for the OSDBU to receive copies of the forms.

—The exclusion of non-profits, educational institutions, and state and local governments from the definition of "Federal prime contractor" in Attachment B. These entities are excluded from the Small Business Competitiveness Demonstration Program, and therefore, are also being excluded from the prime contractors covered by the system.

—The addition of language in the last two sentences of test plan paragraph IV.C. to indicate that the backup data to be provided to OFPP should be the compiled data from the Forms XXX, and not the forms themselves.

—The addition of "direct" before the word "support" in paragraph 2 of Attachment B. This is to clarify that only subcontracts in direct support of the prime contract are covered.

B. Regulatory Flexibility Act

This reporting system will not have a significant impact on small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and, therefore, no Regulatory Impact analysis has been prepared.

The system seeks to measure the amount of small business participation in subcontracts. The reporting requirements of the system will be imposed on large businesses and, as such, there is no cost to small businesses.

C. Executive Order No. 12866

This reporting system has been reviewed in accordance with the objectives and criteria of Executive Order No. 12866. The system will not result in any of the economic or regulatory impacts associated with a significant regulatory action. The system will not have an annual effect on the economy of $100 million or more and will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. It also will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or raise novel legal or policy issues arising out of legal mandates, or the President's priorities, or the principles set forth in this Executive order.

D. Paperwork Reduction Act

The information collection requirements for this reporting system have been approved by the Office of Management and Budget through February 28, 1996 and assigned OMB Control No. 9000–0100.

List of Subjects

Government procurement, Small business procurement.

Allan V. Burman,

Administrator.

[FR Doc. 93–25727 Filed 10–6–93; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for a Revised Information Collection Submitted to OMB for Clearance

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), this notice announces a

request for a revised information collection used to collect information from the public. The Establishment Information Form, the Wage Data Collection Form, and the Continuation Form are wage survey forms developed by the Office of Personnel Management and used by three lead agencies, the Department of Defense, the Department of Veterans Affairs, and the National Aeronautics and Space Administration, to survey private sector business establishments. Data collectors survey 17,000 businesses annually to determine the level of wages paid by private enterprise establishments for representative jobs common to both private industry and Government. Each survey collection requires 4 hours of respondent burden resulting in a total yearly burden of 68,000 hours. The lead agencies use this information to establish rates of pay for Federal Wage System employees. For copies of this proposal, call C. Ronald Trueworthy, Agency Clearance Officer, on (703) 908–8550.

DATES: Comments on this proposal should be received within 30 days after the date of this notice.

ADDRESSES: Send or deliver written comments to: Joseph Lackey, OPM Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Paul A. Shields, (202) 606–2848.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 93–25608 Filed 10–19–93; 8:45 am]

BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

[Order No. 992; Docket No. A94–1]

Waka, Texas 79093 (Mr. and Mrs. Carl Carter, Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued October 14, 1993.

Docket number: A94–1

Name of affected post office: Waka, Texas 79093

Name(s) of petitioner(s): Mr. and Mrs. Carl Carter

Type of determination: Consolidation

Date of filing of appeal papers: October 8, 1993

Categories of issues apparently raised:

1. Effect on postal services (39 U.S.C. 404(b)(2)(C)).
2. Effect on the community (39 U.S.C. 404(b)(2)(A)).
3. Economic savings (39 U.S.C. 404(b)(2)(D)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before October 25, 1993.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

APPENDIX

October 8, 1993	Filing of Petition.
October 14, 1993	Notice and Order of Filing of Appeal.
November 2, 1993	Last day of filing of petitions to intervene (see 39 CFR 3001.111(b)).
November 12, 1993	Petitioners' Participant Statement or Initial Brief (see 39 CFR 3001.115(a) and (b)).
December 2, 1993	Postal Service Answering Brief (see 39 CFR 3001.115(c)).
December 17, 1993	Petitioners' Reply Brief should Petitioners choose to file one (see 39 CFR 3001.115(d)).
December 27, 1993	Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116).
February 4, 1994	Expiration of 120-day decisional schedule (see 39 U.S.C. 404(b)(5)).

[FR Doc. 93–25684 Filed 10–19–93; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33045; File No. SR–NYSE–93–28]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Rule 35 (Floor Employees to be Registered) and Rule 301 (Proposed Transfer or Lease of Membership)

October 14, 1993.

I. Introduction

On June 15, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rules 35 and 301 to adopt provisions requiring all floor employees to submit a Uniform Application for Securities Industry Registration or Transfer ("Form U–4") in order to become registered with the Exchange. The proposed rule change also would require all floor employees of members and member organizations, all employees of members and member organizations, who have submitted registration applications for admission to the floor, and all Exchange members and every applicant for membership to

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991.

submit fingerprints to the Exchange.[3] On August 4, 1993, the NYSE submitted to the Commission Amendment No. 1 to the proposed rule change.[4]

The proposed rule change, together with Amendment No. 1, was noticed in Securities Exchange Act Release No. 32788 (August 23, 1993), 58 FR 45366 (August 27, 1993). No comments were received on the proposal. This order approves the proposed rule change, including Amendment No. 1.

II. Description of the Proposal

The NYSE's proposal consists of amendments to Rules 35 ("Floor Employees to be Registered") and 301 ("Proposed Transfer or Lease of Membership"). NYSE Rule 35 currently provides, among other matters, that an employee of a member or member organization may not be admitted to the trading floor unless such employee is registered with, and approved by, the Exchange for admittance and until the employer and employee have complied with the requirements set forth by the Exchange.[5] The NYSE proposes to amend the Supplementary Material to Rule 35 to require that registration applications for all employees of members and member organizations for admission to the floor be submitted to the Exchange on the Form U–4.[6] The Exchange states that having the background information submitted on Form U–4 will enable the Exchange to better fulfill its responsibilities by identifying those individuals who are statutorily disqualified under section 3(a)(39) of the Act.[7] The NYSE also notes that detailed reporting regarding statutory disqualification to the Commission is required by Rule 19h–1 under the Act for admission or continuance of membership or participation or association with a member or member organization, notwithstanding a statutory disqualification.

The NYSE also proposes to amend the Supplementary Material to Rule 35 to require that all floor employees of members and member organizations and all employees of members and member organizations who have submitted registration applications for admission to the Floor be fingerprinted and submit, or cause to be submitted, their fingerprints to the Exchange for identification and appropriate processing.[8] Similarly, the NYSE proposes to amend the Supplementary Material to Rule 301[9] to require that every member and every applicant for membership be fingerprinted and submit, or cause to be submitted, their fingerprints to the Exchange for identification and appropriate processing.[10]

The Exchange states that requiring all Exchange members and floor employees of members and member organizations to be fingerprinted will help identify persons who are subject to a statutory disqualification as well as enhance the overall security on the Exchange floor. The NYSE believes that the proposed fingerprint requirement is consistent with section 17(f)(2) of the Act, which requires, with certain exceptions, fingerprinting of each partner, director, officer or employee of a broker-dealer. The Exchange states that all members should be fingerprinted because they represent customers in the auction market and are an integral part of the trading process.

Finally, the Exchange argues that the proposed rule change is consistent with section 6(b)(5) of the Act, which provides, in pertinent part, that the rules of an exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade and to protect the investing public.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of sections 6(b) (1) and (5) of the Act.[11] The Commission believes that the NYSE's proposal is consistent with the requirements under section 6(b)(1) of the Act that an exchange be organized and have the capacity to carry out the purposes of the Act and to comply and enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Commission also believes that the proposal is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in accordance with section 6(b)(5) of the Act.

The Commission believes that the proposed rule change should assist the exchange in determining whether a floor employee or Exchange member is subject to a statutory disqualification under section 3(a)(39) of the Act. Section 3(a)(39) provides, among other things, that a person is subject to a statutory disqualification with respect to membership or participation in or association with a member of an SRO if that person has been and is expelled or suspended from membership or participation in or barred or suspended from being associated with a member of an SRO. The Commission believes that by requiring floor employees to provide detailed background information in a Form U–4 and requiring that floor employees and Exchange members submit their fingerprints to the Exchange, the proposed rule change should facilitate the accurate verification of the identity and background of floor employees and members. As a result, the proposal should facilitate compliance with NYSE Rule 346(f) which provides that, except as otherwise permitted by the Exchange, no member, member organization, allied member, approved person, employee or any person directly or indirectly controlling, controlled by or under common control with a member or member organization shall have associated with him or if any person who is known, or in the exercise of reasonable care should be known, to be

[3] The requirements of amended Rules 35 and 301 to submit Form U–4 and fingerprints to the Exchange would apply to all current and prospective floor employees and members.

[4] See letter from Daniel Parker Odell, Assistant Secretary, NYSE, to Diana Luka-Hopson, Branch Chief, Commission, dated July 30, 1993. Amendment No. 1 renumbered the Supplementary Material to NYSE Rule 301.

[5] The Commission recently approved an amendment to the NYSE's Floor Conduct and Safety Guidelines that imposes a $1,000 fine on members or member organizations that fail to comply with the NYSE's floor clerical personnel clearance procedures in NYSE Rule 35. See Securities Exchange Act Release No. 32422 (June 7, 1993), 58 FR 29019 (June 18, 1993) (order granting accelerated approval to File No. SR–NYSE–93–14).

[6] Form U–4 requires detailed information regarding employment and disciplinary history, and is the standard industry form submitted to self-regulatory organizations ("SRO") for individuals required to be registered applying for Exchange membership. Currently, only floor employees that accept orders from the public are required to submit a completed Form U–4.

[7] 15 U.S.C. 78c(a)(39) (1988). Section 3(a) (39) of the Act defines those persons subject to a statutory disqualification with respect to membership or participation in, or association with a member of, an SRO.

[8] The Exchange stated that, pursuant to the General Instructions to Form U–4, floor employees would be under a continuing obligation to update information required by Form U–4 as changes occur. Telephone conversation between Pat Dorilio, Rule & Interpretive Standards, NYSE, and Louis A. Randazzo, Attorney, Commission, on July 23, 1993.

[9] NYSE Rule 301 currently provides, among other matters, that an offer or agreement by a member to transfer membership or for the lease of membership may be made only in such form as may from time to time be prescribed by the Constitution of the Exchange or the Rules of its Board of Directors.

[10] Currently, the Exchange requires only members conducting business with the public to submit fingerprints.

[11] 15 U.S.C. 78f (1988).

subject to any statutory disqualification defined in section 3(a)(39) of the Act.[12]

The Commission believes that the proposal to require the submission of fingerprints to the Exchange by floor employees and Exchange members is consistent with section 17(f)(2) of the Act[13] and Exchange Act Rule 17f-2.[14] Section 17(f)(2) provides that every member of a national securities exchange, broker, dealer, registered transfer agent and registered clearing agency require that each of its partners, directors, officers and employees be fingerprinted and submit, or cause to be submitted, the fingerprints of such person to the Attorney General of the United States or its designee for identification and processing. Rule 17f-2 provides certain exemptions from this fingerprint requirement, including an exemption for employees of exchange members who satisfy the requirements of the Rule. The Commission believes, however, that it is appropriate for the NYSE to determine to impose a fingerprint requirement upon its floor employees and Exchange members. Indeed, in the release announcing the adoption of Rule 17f-2, the Commission stated that the Rule's exemptions were permissive, not mandatory.[15] The Commission also stated that an organization may require the fingerprinting of any persons granted exemptions by the Rule.[16] The Commission believes that because floor employees and Exchange members are an integral part of the auction market, it is reasonable for the NYSE to determine to impose a fingerprint requirement on such persons.

The Commission also believes that the NYSE's proposal to fingerprint Exchange members and floor employees is a reasonable measure which should help to ensure the security of NYSE staff, members, and the Exchange facility and, also should contribute to the efficient, undisrupted conduct of business on the Exchange. As a result, the proposal should enhance the members' ability to engage in transactions in securities and, thereby, protect investors and the public interest.

Finally, the Commission believes that the proposed rule change should help the NYSE to identify persons who are subject to a statutory disqualification and contribute to the NYSE's efforts to enhance security on the NYSE floor without being unduly burdensome on floor employees and members. Specifically, the proposed procedures are reasonable because of the NYSE's interest in ensuring the safety of its trading floor and the floor personnel thereon. In addition, the Exchange stated that current floor employees and members would be given 60 days from Commission approval of the proposed rule change to comply with the Form U-4 and fingerprint requirements.[17] The Commission believes that this 60 day period should provide current floor employees and members with an adequate amount of time to comply with the revised requirements of Rules 35 and 301.[18]

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[19] that the proposed rule change (SR-NYSE-93-28) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-25730 Filed 10-19-93; 8:45 am]

BILLING CODE 8010-01-M

[12] Rule 346(f) provides that any member organization seeking permission to have such a person continue to be or become associated with it shall pay a fee in an amount to be determined by the Exchange. Section 6(c)(2) of the Act specifies that an exchange may, and in cases in which the Commission directs shall, deny membership to any registered broker or dealer or natural person associated with a registered broker or dealer and bar from becoming associated with a member any person who is subject to a statutory disqualification. Section 6(c)(2) requires that an exchange file notice with the Commission not less than thirty days prior to admitting any person to membership or permitting any person to become associated with a member if the exchange knows, or in the exercise of reasonable care should know, that such person is subject to a statutory disqualification. Rule 19h-1 specifies the notice requirements for admission or continuance of membership for a person subject to a statutory disqualification.

[13] 15 U.S.C. 78q(f)(2) (1988).

[14] 17 CFR 240.17f-2 (1991).

[15] See Securities Exchange Act Release No. 12214 (March 16, 1976), 41 FR 13594 (March 31, 1976) (Notice of Adoption of Rule 17f-2, effective July 1, 1976, Providing Exemptions from the Fingerprinting Requirements of Section 17(f)(2) of the Securities Exchange Act of 1934, as amended, and Extension of Temporary Rule 17f-2(T), Exempting all persons from the Requirements of Section 17(f)(2), Until July 1, 1976).

[16] See Securities Exchange Act Release No. 12214, *supra* note 15.

[17] Telephone conversation between Donald van Weezel, Managing Director, Regulatory Affairs, NYSE, and Louis A. Randazzo, Attorney, Commission, on September 17, 1993.

[18] The Exchange stated that notice of the adoption of the proposed amendments would be provided to members and floor employees by a special circular explaining the procedures for admittance to the Floor. Telephone conservation between Donald van Weezel, Managing Director, Regulatory Affairs, NYSE, and Louis A. Randazzo, Attorney, Commission, on July 12, 1993.

[19] 15 U.S.C. 78s(b)(2) (1988).

[20] 17 CFR 200.30-3(a)(12) (1991).

[Release No. 34-33046; File No. SR-SCCP-93-04]

Self-Regulatory Organizations; Stock Clearing Corp. of Philadelphia; Filing and Immediate Effectiveness of a Proposed Rule Change Reducing the Maximum Trade Value Charge

October 14, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 29, 1993, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-SCCP-93-04) as described in Items I, II, and III below, which Items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will reduce SCCP's maximum trade value charge.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SCCP seeks to reduce its maximum trade value fee from the current charge of $50.00 to $25.00. The proposed fee change is effective as of September 27, 1993, which is the start of a new billing cycle, and is in conjunction with the Philadelphia Stock Exchange's fee reduction.[2] The fee cap reduction should encourage the clearing of block and other large dollar value trades through SCCP.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 32924 (September 20, 1993), 58 FR 50380 (File No. SR-PHLX-93-33) (notice of filing and immediate effectiveness of amendment to fee schedule).

The proposed rule change is consistent with section 17A of the Act [3] in that it provides for the equitable allocation of a reasonable fee among SCCP's clearing members as required by section 17A(b)(3)(D) of the Act.[4]

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on filing pursuant to section 19(b)(3)(A)(ii) [5] of the Act and pursuant to Rule 19b-4(e)(2) [6] promulgated thereunder because the proposed rule change establishes or changes a due, fee, or other charge imposed by SCCP. At any time within sixty days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to File No. SR-SCCP-93-04 and should be submitted by November 10, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-25731 Filed 10-19-93; 8:45 am]

BILLING CODE 8010-01-M

[3] 15 U.S.C. 78q-1 (1988).

[4] 15 U.S.C. 78q-1(b)(3)(D) (1988).

[5] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[6] 17 CFR 240.19b-4(e)(2) (1992).

[7] 17 CFR 200.30-3(a)(12) (1992).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Boston Stock Exchange, Inc.

October 14, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Exploration Company of LA
Common Stock, $.01 Par Value (File No. 7-11404)

Daimler Benz Corp AG
American Depositary Shares, No Par Value (File No. 7-11405)

Grupo Tribasa S.A. de C.V.
American Depositary Shares, No Par Value (File No. 7-11406)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 4, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-25735 Filed 10-19-93; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Chicago Stock Exchange, Inc.

October 14, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following security:

Daimler Benz Corp Aktiengesllschaft
American Depositary Shares (each representing 1.10th of an ordinary bearer shares of DM 50 each) (File No. 7-11402)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 4, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-25732 Filed 10-19-93; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

October 14, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section

12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following security:

Daimler Benz Corp Aktiengesellschaft
American Depositary Shares (rep. 1/10th Ord. Bearer Sh. of DM 50) (File No. 7–11403)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 4, 1993, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–25734 Filed 10–19–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Pacific Stock Exchange, Inc.

October 14, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following security:

Daimler-Benz Corp Aktiengesllschaft
American Depositary Shares (Representing 1/10 Ordinary Bearer share of DM 50) (File No. 7–11395)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 4, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–25733 Filed 10–19–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 14, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Hills Stores Company
Series A Conv. Pfd Stock (File No. 7–11396)

NVR, Inc.
Warrants "When Issued" (File No. 7–11397)

Daimler Benz Corp Aktiengesellschaft
American Depositary Shares 1.10th of an ordinary Bearer Share of DM 50 (File No. 7–11398)

Nation Government Income Term Trust 2003, Inc.
Common Stock, $.001 Par Value (File No. 7–11399)

Grupo Tribasa S.A. de C.V.
American Depositary Shares each representing 2 shares of Common Stock, No Par Value (File No. 7–11400)

ALC Communications
Common Stock, $0.01 Par Value (File No. 7–11401)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 4, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–25736 Filed 10–19–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19789; 811–4792]

Colonial New York Tax-Exempt Trust; Application for Deregistration

October 14, 1993.

AGENCY: Securities and Exchange Commission ("SEC")

ACTION: Notice if application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Colonial New York Tax-Exempt Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on October 1, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 8, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, One Financial Center, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 272–5287, or C. David Messman, Branch Chief, at (202) 272–

3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Massachusetts business trust, is registered under the Act as an open-end non-diversified management investment company. On August 11, 1986, applicant filed a registration statement under the Securities Act of 1933 and section 8(b) of the Act. The registration statement was declared effective on September 26, 1986, and the initial public offering of applicant's shares commenced on that date.

2. On April 12, 1991 and December 13, 1991, applicant's Board of Trustees unanimously approved the terms of the an agreement and plan of reorganization (the "Plan"), which provided for the reorganization of applicant into Colonial New York Tax-Exempt Fund (the "Fund"), a newly organized series on Colonial Trust V (File No. 811–5030), a registered open-end management investment company. At the same time, the Board of Trustees authorized the preparation and filing of proxy material relating to the proposed reorganization, and authorized the calling of a special meeting of shareholders of applicant to vote on the proposed reorganization. On December 13, 1991, the Board of Trustees also determined pursuant to rule 17a–8 under the Act that participation in the proposed transaction was in applicant's best interest and that the interests of applicant's existing shareholders would not be diluted as a result of such transaction.[1]

3. Applicant filed preliminary proxy materials with the SEC on May 21, 1992. Definitive copies of these materials were sent to applicant's shareholders and filed with the SEC on June 19, 1992. At a special meeting held on August 3, 1992, applicant's shareholders approved the reorganization.

4. Prior to the merger, the Fund had no assets or shareholders. The merger was in economic terms a change in organizational structure, rather than a merger of two operating investment companies.

5. As of July 31, 1992, applicant had 6,314,511 shares outstanding with a net asset value of $7.15 per share. On August 3, 1992, applicant transferred all of its assets to the Fund and the Fund assumed all of applicant's obligations and liabilities. In exchange for these assets, the Fund issued to applicant a number of shares of the Fund equal to the number of applicant's shares then outstanding. Applicant then distributed all such shares of the Fund *pro rata* to its shareholders in complete liquidation of their interests in applicant.

6. Applicant paid all expenses incurred in connection with the Plan. These expenses totaled approximately $17,096, and consisted of legal, auditing, printing and postage expenses, as well as certain expenses related to the proxy solicitation. No brokerage fees were incurred in connection with the transaction.

7. At the time of the application, applicant had no shareholders, assets, or liabilities. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those required for the winding-up of its affairs.

8. After receipt of the requested order, applicant intends to file certificates of dissolution or similar documents in accordance with Massachusetts law.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25738 Filed 10–19–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19790; 811–4795]

Colonial Ohio Tax-Exempt Trust; Application for Deregistration

October 14, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application of deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Colonial Ohio Tax-Exempt Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on October 1, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 8, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, One Financial Center, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 272–5287, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Massachusetts business trust, is registered under the Act as a open-end non-diversified management investment company. On August 11, 1986, applicant filed a registration statement under the Securities Act of 1933 and section 8(b) of the Act. The registration statement was declared effective on September 26, 1986, and the initial public offering of the applicant's shares commenced on that date.

2. On April 12, 1991 and December 13, 1991, applicant's Board of Trustees unanimously approved the terms of an agreement and plan of reorganization (the "Plan"), which provided for the reorganization of applicant into Colonial Ohio Tax-Exempt Fund (the "Fund"), a newly organized series of Colonial Trust V (File No. 811–5030), a registered open-end management investment company. At the same time, the Board of Trustees authorized the preparation and filing of proxy material relating to the proposed reorganization, and authorized the calling of a special meeting of shareholders of applicant to vote on the proposed reorganization. On December 13, 1991, the Board of Trustees also determined pursuant to rule 17a–8 under the Act that participation in the proposed transaction was in applicant's best interest and that the interests of applicant's existing shareholders would

[1] Rule 17a–8 provides relief from the affiliated transaction prohibition of section 17(a) of the Act for a merger of investment companies that may be affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

not be diluted as a result of such transaction.[1]

3. Applicant filed preliminary proxy materials with the SEC on May 21, 1992. Definitive copies of these materials were sent to applicant's shareholders and filed with the SEC on June 19, 1992. At a special meeting held on August 3, 1992, applicant's shareholders approved the reorganization.

4. Prior to the merger, the Fund had no assets or shareholders. The merger was in economic terms a change in organizational structure, rather than a merger of two operating investment companies.

5. As of July 31, 1992, applicant had 7,538,319 shares outstanding with a net asset value of $7.35 per share. On August 3, 1992, applicant transferred all of its assets to the Fund and the Fund assumed all of applicant's obligations and liabilities. In exchange for these assets, the Fund issued to applicant a number of shares of the Fund equal to the number of applicant's shares then outstanding. Applicant then distributed all such shares of the Fund *pro rata* to its shareholders in complete liquidation of their interests in applicant.

6. Applicant paid all expenses incurred in connection with the Plan. These expenses totaled approximately $19,690, and consisted of legal, auditing, printing and postage expenses, as well as certain expenses related to the proxy solicitation. No brokerage fees were incurred in connection with the transaction.

7. At the time of the application, applicant had no shareholders, assets, or liabilities. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those required for the winding-up of its affairs.

8. After receipt of the requested order, applicant intends to file certificates of dissolution or similar documents in accordance with Massachusetts law.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-25737 Filed 10-19-93; 8:45 am]

BILLING CODE 8010-01-M

[1] Rule 17a-8 provides relief from the affiliated transaction prohibition of section 17(a) of the Act for a merger of investment companies that may be affiliated persons of such other solely by reason of having a common investment adviser, common directors, and/or common officers.

DEPARTMENT OF STATE

[Public Notice 1881]

United States Organization for the International Telegraph and Telephone Consultative Committee; Study Group D Meeting

The Department of State announces that the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group D Meeting will meet on November 2, 1993 from 9 a.m. to 2 p.m. in room 1205, at the Department of State, 2201 C Street, NW., Washington, DC 20520.

The proposed agenda for this meeting will include the review of U.S. contributions for the meetings of Study Group 8, in November 1993, the results of the Geneva meeting of Study Group 14, and to consider any other business within the scope of Study Group D.

Members of the general public may attend these meetings and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meetings. Persons who plan to attend should advise the Office of Gary Fereno, Department of State, (202) 647-0201, FAX (202) 647-7407. The above includes government and non-government attendees. Public visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting in order to be admitted. All attendees must use the C Street entrance.

Please bring 50 copies of documents to be considered at these meetings. If the document has been mailed to the membership, bring only 10 copies.

Dated: October 5, 1993.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman, U.S. CCITT National Committee.

[FR Doc. 93-25698 Filed 10-19-93; 8:45 am]

BILLING CODE 4710-45-M

[Public Notice 1886]

United States Organization for the International Telegraph and Telephone Consultative Committee Study Group B Meeting

The Department of State announces that the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group B Meeting will meet on November 9, 1993 from 9:30 a.m. in room 1912, at the Department of State, 2201 C Street, NW., Washington, DC 20520.

The proposed agenda for this meeting will include call to order/introductions, approval of the agenda, approval of June 16, 1993, summary of meeting minutes, review results and activities of ITU-T Study Group 13 meeting (July 5-16, 1993), consideration of contributions for ITU-T Study Group 11 Meeting, which will be held November 29 through December 17, 1993, and others that are appropriate for Study Group B, announce the names of members of the U.S. Delegation, and other business.

* * * If you wish to be a part of the U.S. Delegation to the SG 11 Meeting, please inform Gary Fereno at the Department of State (202) 647-2592 and complete required documentation 30 days prior to the start of the meeting.

Members of the general public may attend these meetings and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meetings. Persons who plan to attend should advise the Office of Gary Fereno, Department of State, (202) 647-0201, FAX (202) 647-7407. The above includes government and non-government attendees. Public visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting in order to be admitted. All attendees must use the C Street entrance.

Please bring 50 copies of documents to be considered at these meetings. If the document has been mailed to the membership, bring only 10 copies.

Dated: October 8, 1993.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman, U.S. CCITT National Committee.

[FR Doc. 93-25694 Filed 10-19-93; 8:45 am]

BILLING CODE 4710-45-M

[Public Notice 1883]

Overseas Security Advisory Council; Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Monday and Tuesday, November 15-16,

1993 at 8:30 a.m. at the Department of State, Washington, DC. Pursuant to section 10 (d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c) (1) and (4), it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda calls for the discussion of classified and corporate proprietary/security information as well as private sector physical and procedural security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522–1003, phone: 703/204–6185.

Dated: October 7, 1993.

Mark Mulvey,

Director of the Diplomatic Security Service.

[FR Doc. 93–25695 Filed 10–19–93; 8:45 am]

BILLING CODE 4710–24–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 201
Wednesday, October 20, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., Wednesday, October 27, 1993.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Wyoming Fuel Co.*, Docket No. WEST 91-598-R, etc. (Issues include whether the judge erred in finding that Wyoming Fuel Co. violated its ventilation plan because of the presence of water in the bleeder system and in finding that the violation was of a significant and substantial nature.

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

TIME AND DATE: Immediately following oral argument.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Wyoming Fuel Co.*, Docket No. WEST 91-598-R, etc. (See Oral Argument Listing)

It was determined by unanimous vote of Commissioners that this meeting be held in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Jean Ellen,

Agenda Clerk.

[FR Doc. 93-25953 Filed 10-18-93; 3:22 pm]

BILLING CODE 6735-01-M

MARINE MAMMAL COMMISSION

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Wednesday, November 17, 1993, from 8:30 a.m. to 10:00 a.m. The public sessions of the Commission and the Committee meeting will be held on Wednesday, November 17, from 10:00 a.m. to 6:30 p.m., Thursday, November 18, from 9:00 a.m. to 6:30 p.m., and on Friday, November 19, from 9:00 a.m. to 1:00 p.m.

PLACE: The Hotel Galvez, 2024 Seawall Boulevard, Galveston Island, Texas, 77550.

STATUS: The executive session will be closed to the public. At it, matters relating to personnel, the internal practices of the Commission, and international negotiations in process will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed if time permits and it is determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine mammal matters. Among the issues that the Commission plans to consider at the meeting are: proposed amendments to the Marine Mammal Protection Act; and the 1993 International Whaling Commission meeting and preparations for 1994; marine mammal die-offs and stranding programs; Fish and Wildlife Service and National Marine Fisheries Service activities bearing on marine mammals in Alaska; conservation plans and programs; recovery plans and programs; and marine mammal/fishery interactions.

SUPPLEMENTARY INFORMATION: This is a second notice of the Commission's 1993 meeting and does not constitute any significant change in the scheduling, location, or agenda of the meeting as originally published in the May 21, 1993 (58 FR 29694) notice.

CONTACT PERSON FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1825 Connecticut Avenue, NW., Room 512, Washington, DC 20009, 202/606-5504.

Dated: October 15, 1993.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 93-25840 Filed 10-18-93; 8:55 am]

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federal register

Part II

Environmental Protection Agency

40 CFR Part 68

Risk Management Programs for Chemical Accidental Release Prevention; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[A-91-73; FRL-4790-1]

Risk Management Programs for Chemical Accidental Release Prevention

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Under the Clean Air Act, as amended, the U.S. Environmental Protection Agency (EPA) is proposing regulations that would require development and implementation of risk management programs at facilities that manufacture, process, use, store, or otherwise handle regulated substances in quantities that exceed specified thresholds. EPA has proposed a list of regulated substances and thresholds separately. Risk management programs provide facilities with an integrated approach to identifying and managing the hazards posed by these regulated substances. The risk management plans developed under such programs would be registered with EPA, provided to the Chemical Safety and Hazard Investigation Board, state governments, and local planning authorities, and made available to the public. The proposed rule would assist facilities and communities in efforts to lessen the number and severity of serious chemical accidents.

DATES: Comments must be submitted on or before February 16, 1994. A public hearing will be held in Washington, DC, on November 30, 1993, from 9 a.m. to 5 p.m. Persons interested in appearing at a public hearing should register with EPA at (703) 218-2570 by November 23, 1993; a copy of the testimony should be submitted by November 23, 1993, to Dr. Lyse Helsing (see the **FOR FURTHER INFORMATION** section).

Docket: Supporting documentation used in developing this proposed rule is contained in Docket No. A-91-73. This docket is available for public inspection and copying between 8:30 a.m. and 12 noon, and between 1:30 and 3:30 p.m., Monday through Friday, at the address listed below. A reasonable fee may be charged for copying.

ADDRESSES: Comments may be mailed or submitted to: Environmental Protection Agency, Air Docket (LE-131), Attn: Docket No. A-91-73, Waterside Mall, 401 M St. SW., Washington, DC 20460. Comments must be submitted in duplicate. The public hearing will be held at Temple Micah, 600 M Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Lyse Helsing, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency, OS-120, 401 M St. SW., Washington, DC 20460, (202) 260-6128; or the Emergency Planning and Community Right-to-Know Hotline, (800) 535-0202; in northern Virginia and Alaska, (703) 920-9877.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

A. Statutory Authority

This notice of proposed rulemaking (NPRM) is being issued under sections 112(r)(7) and 301(a)(1) of the Clean Air Act (CAA) as amended (42 U.S.C. 7412(r)(7) and 7601(a)(1)).

B. Background

Public awareness of the potential danger from accidental releases of hazardous chemicals has increased over the years as serious chemical accidents have occurred around the world (e.g., the 1974 explosion in Flixborough, England, and the 1976 release of dioxin in Seveso, Italy). Public concern intensified following the 1984 release of methyl isocyanate in Bhopal, India, that killed more than 2,000 people living near the facility. A subsequent release from a chemical facility in Institute, West Virginia, sent more than 100 people to the hospital and made Americans aware that such incidents can and do happen in the U.S.

In response to this public concern and the hazards that exist, the United States Environmental Protection Agency (EPA) began its Chemical Emergency Preparedness Program (CEPP) in 1985, as part of the Agency's Air Toxics Strategy. CEPP was a voluntary program to encourage state and local authorities to identify hazards in their areas and to plan for chemical emergency response actions. In 1986, Congress enacted many of the elements of CEPP in the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). SARA Title III requires states to establish state and local emergency planning groups to develop chemical emergency response plans for each community. SARA Title III also requires facilities to provide information on the hazardous chemicals they have on site to the states, local planners, and fire departments, and, through them, the public. This information forms the foundation of both the community emergency response plans and the public-industry dialogue on risks and risk reduction.

SARA Title III did not mandate that facilities establish accident prevention programs. However, Congress acknowledged the importance of accident prevention by requiring EPA, under SARA section 305(b), to conduct a review of emergency systems to monitor, detect, and prevent chemical accidents. The final report to Congress, Review of Emergency Systems (EPA, 1988), stated that

> * * * prevention does not depend on a single piece of equipment or a single technique. Prevention must be part of a comprehensive, integrated system that considers the hazards of the chemicals involved, the hazards of the process, the hazards to the community, and the capabilities of facility personnel. None of the elements should be considered in isolation nor should any single technical solution be considered a complete solution to a particular problem. Each change in a facility, process, or procedure will have multiple effects that must be assessed in the context of the entire operation.

The report concluded that the key to a successful process safety management system is the commitment of management (facility and corporate) to safety.

Although SARA Title III did not directly address accident prevention except through section 305(b), EPA

recognized that prevention, preparedness, and response form a continuum. In 1986, therefore, EPA established a chemical accident prevention program to collect information on chemical accidents and to work with other groups to increase knowledge of prevention practices, encourage industry to improve safety at facilities, and foster increased awareness of prevention, preparedness, and response at the local level. Under this program, EPA developed its Accidental Release Information Program (ARIP) to collect data on the causes of chemical accidents and the steps facilities take to prevent recurrences. EPA also developed a program for conducting chemical safety audits at facilities to learn more about how facilities develop systems to prevent accidents. Through the audit program, EPA has trained its regional staff as well as state officials on how to conduct audits. EPA has worked with trade associations, professional organizations, labor, environmental groups, and other Federal agencies to determine how best to reach smaller operations, which the SARA section 305(b) study indicated are less aware of risks than larger facilities. EPA has also been an active participant in international efforts related to chemical accident prevention, particularly through the Organisation for Economic Cooperation and Development, which has held five international workshops from 1989 through 1991 to discuss issues related to accident prevention, preparedness, and response, and has developed guidelines for member countries.

In addition to EPA's work in this area, other agencies, states, industries, trade associations, and professional organizations have developed programs related to chemical accident prevention. On February 24, 1992, the U.S. Occupational Safety and Health Administration (OSHA) promulgated a standard on chemical process safety management (57 FR 6356). Four states—New Jersey, California, Delaware, and Nevada—have regulations requiring facilities to prepare and implement risk management plans. The American Institute of Chemical Engineers (AIChE), through its Center for Chemical Process Safety, has published guidance on the management of chemical process safety as well as guidelines on topics related to hazard evaluation, vapor cloud dispersion modeling, handling and storage practices, and vapor cloud mitigation. The Chemical Manufacturers' Association (CMA) has adopted its Responsible Care™ program, with which all CMA members must comply to maintain membership. The American Petroleum Institute has developed a similar program (RP 750) for its members. In 1982, the European Community adopted the Seveso Directive (82/501/EEC, as amended), which requires facilities handling certain chemicals to develop a safety report that is similar to a risk management plan. Congress also recognized the need for a chemical accident prevention program at the Federal level and included prevention provisions in the Clean Air Act Amendments of 1990.

C. Clean Air Act Amendments of 1990

The Clean Air Act Amendments of 1990, signed into law on November 15, 1990, amend Clean Air Act (CAA) section 112 by adding a new subsection (r), which includes requirements related to chemical accident prevention. The goal of CAA section 112(r) is to prevent accidental releases of regulated substances and other extremely hazardous substances to the air and to minimize the consequences of releases by focusing preventive measures on those chemicals that pose the greatest risk.

Section 112(r) has a number of provisions. It establishes a general duty for facilities (i.e., stationary sources) to identify hazards that may result from releases, to design and maintain a safe facility, and to minimize the consequences of releases when they occur. Section 112(r)(3) requires EPA to promulgate a list of at least 100 substances that are known to cause, or may be reasonably anticipated to cause, death, injury, or serious adverse effects to human health or the environment when released to air. EPA is required to set thresholds for each listed substance. The proposed rule for the list and thresholds was published on January 19, 1993 (58 FR 5102). The proposed list includes 100 substances listed based on acute toxicity, 62 flammable gases and highly flammable liquids, and high explosives as a class.

CAA section 112(r)(7) requires EPA to promulgate, by November 15, 1993, "reasonable regulations and appropriate guidance" to provide for the prevention and detection of accidental releases and for responses to such releases. These regulations shall include, as appropriate, provisions concerning the use, operation, repair, and maintenance of equipment to monitor, detect, inspect, and control releases, including training of personnel in the use and maintenance of equipment or in the conduct of periodic inspections. The regulations shall require facilities to prepare and implement risk management plans that shall provide for compliance with regulations for managing risk (the "risk management program") and shall include a hazard assessment, a prevention program, and an emergency response program. The list and thresholds promulgated under CAA section 112(r)(3) will determine which facilities must comply with the accident prevention regulations.

The CAA, as amended, establishes a Chemical Safety and Hazard Investigation Board to investigate or cause to be investigated the causes of chemical accidents and to report its findings to Congress, Federal, state, and local authorities, and the public. Under the CAA, EPA is also required to conduct studies related to accidental releases, including research on hazard assessments, hydrogen fluoride, and air dispersion modeling.

In addition, section 304 of the Clean Air Act Amendments of 1990 requires OSHA to promulgate, under the Occupational Safety and Health Act (29 U.S.C. 655), a chemical process safety standard in order to protect employees from hazards associated with accidental releases of highly hazardous chemicals in the work place. OSHA promulgated its standard for process safety management for highly hazardous chemicals on February 24, 1992 (57 FR 6356). Sections IIC and IV of this preamble discuss the relationship between EPA's proposed risk management program and the OSHA standard on chemical process safety management.

Finally, CAA section 112(l) requires EPA to develop guidance for states, especially for the registration of sources (facilities). This CAA section also contains the statutory authority for EPA to approve and delegate Federal authority to the states. For further information on EPA's proposed rule on CAA section 112(l), see 58 FR 29296, May 19, 1993.

II. Risk Management Programs

A. Clean Air Act Requirements

Today's proposed requirements to develop and implement a risk management program are in response to CAA section 112(r)(7)(B). Specifically, CAA section 112(r)(7)(B)(i) requires EPA to adopt "reasonable regulations and appropriate guidance" to provide for the prevention and detection of accidental releases and for response to such releases. As appropriate, the requirements shall address the use, operation, repair, replacement, and maintenance of equipment to monitor, detect, inspect, and control accidental releases, including the training of

persons in the use and maintenance of equipment and in the conduct of periodic inspections. The regulations shall include procedures and measures for emergency response after an accidental release. The Act requires that the regulations be promulgated by November 15, 1993.

CAA section 112(r)(7)(B)(ii) states:

> The regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

The risk management plans must include a hazard assessment that evaluates potential effects of an accidental release of any regulated substance. The hazard assessment must include an estimate of potential release quantities and downwind effects, including potential exposure to populations. The assessment also must include a five-year release history, including the size, concentration, and duration of releases, and must consider worst-case release scenarios. The risk management plan must also document a prevention program including safety precautions, maintenance, monitoring, and employee training measures. The final specified element that must be documented in the risk management plan is an emergency response program that provides specific actions to be taken in response to a release to protect human health and the environment, including informing the public and local agencies, emergency health care, and employee training.

CAA section 112(r)(7)(B)(iii) requires that the risk management plans be registered with EPA. The plans must be submitted to the implementing agency, the Chemical Safety and Hazard Investigation Board, the state emergency response commission (SERC), and the local emergency planning committee (LEPC). These plans shall be available to the public under CAA section 114(c). EPA must establish a system for auditing the risk management programs. EPA must also ensure that plans are updated periodically.

The proposed rule would require facilities to do three things:

(1) Register with EPA three years after publication of the final rule in the Federal Register. The registration would consist of a written form to be sent to EPA headquarters indicating that the facility is covered by the rule, identifying the regulated substances triggering the registration and the quantity of those substances (in ranges) in a process. If the information on the registration changes (e.g., because new chemicals are added, chemicals are dropped, or the quantity changes), facilities would be required to submit an amended registration form;

(2) Develop and implement a risk management program that includes a hazard assessment, prevention program, and emergency response program, and maintain onsite documentation of the implementation. The hazard assessment would include offsite consequence analyses and a five-year accident history. The prevention program would consist of a process hazard analysis, process safety information, standard operating procedures (SOPs), training, maintenance, pre-startup reviews, management of change, safety audits, accident investigations, and a management system. The emergency response program would require emergency response plans, drills or exercises, and coordination with public emergency response plans; and

(3) Develop and submit to the Chemical Safety and Hazard Investigation Board, the implementing agency, SERC, and LEPC, a risk management plan (RMP) that would document the results of the risk management program including a summary of the offsite consequence analysis, a list of major hazards, steps being taken to address those hazards (i.e., a summary of the facility's prevention program), a five-year accident history, a description of the emergency response program, and a description of the management system that ensures the safety of the facility and the implementation of the required elements. This plan will be available to the public.

The risk management program addresses the general requirements of CAA section 112(r)(7)(B)(i) for regulations to provide for accidental release detection and prevention. The risk management plan, referred to as the RMP in this preamble, addresses the specific requirements of CAA section 112(r)(7)(B)(ii) for a plan that provides governmental entities and the public with information on the hazards found at facilities and the facilities' plans for addressing the hazards. These hazards would be identified and addressed through implementation of the risk management program elements. Therefore, the RMP would summarize the results of hazard assessments and analyses and the implementation of the risk management program requirements. The submission requirements (registration and the RMP) address the requirements of CAA section 112(r)(7)(B)(iii), as does the requirement for a system to audit RMPs.

B. Other CAA Provisions for Regulations

In addition to CAA section 112(r)(7)(B), CAA section 112(r)(7)(A) authorizes EPA to promulgate "release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements." EPA is investigating whether regulations, other than today's proposed rule on risk management programs, are necessary to prevent and detect accidental releases.

C. Relationship to OSHA's Process Safety Management Standard

The Clean Air Act Amendments of 1990 (CAAA) section 304 requires OSHA to promulgate a chemical process safety standard and a list of highly hazardous chemicals. To meet this mandate, OSHA promulgated its process safety management standard. The OSHA standard is intended to protect workers from chemical accidents at facilities using highly toxic, reactive, flammable, or explosive substances. EPA's mandate under section 112(r) of the CAA is to protect public health and the environment.

EPA and OSHA have met regularly to coordinate their rules to minimize conflicting requirements. To minimize confusion for facilities covered by both rules, the elements and language of EPA's proposed prevention program are, to the maximum extent possible, identical to the parallel elements in OSHA's process safety management standard. The main differences between the EPA's proposed rule and OSHA's standard are those mandated by the CAA, such as the hazard assessment (offsite consequence analysis, the five-year accident history), the emergency response requirements, registration, and the RMP submission to the Board, implementing agency, SERC, and LEPC. In addition, for some elements of the two programs, OSHA's focus is on workplace impacts while EPA's focus is on offsite consequences, reflecting the differing statutory mandates of the two programs. The OSHA standard includes elements specific to worker issues that EPA has not included in its proposed rule. EPA anticipates that facilities in compliance with the requirements in the OSHA rule also will be in compliance with EPA's proposed prevention program elements. That is, for most prevention program elements, facilities that are in compliance with

OSHA's process safety management standard will not need to do anything different or create different onsite documentation to comply with EPA's proposed prevention program requirements. Section IV of this preamble describes the differences that exist between the OSHA standard and EPA's proposed rule and outlines the correspondence between EPA's proposed rule elements and the OSHA standard.

Because EPA's proposed list of chemicals and thresholds and OSHA's list and thresholds are not identical (EPA covers more substances with acute toxic effects, fewer flammables and explosives, and no reactives) and because OSHA does not cover state and local government employees, the universes of facilities covered by the two rules are not identical, although they substantially overlap. See Section X of this preamble for a discussion of the universe of facilities covered by today's proposed rule.

III. Discussion of the Proposed Rule

A. Introduction

AIChE, in its *Technical Management of Chemical Process Safety*, says:

> Management systems for chemical process safety are comprehensive sets of policies, procedures, and practices designed to ensure that barriers to major incidents are in place, in use, and effective. The management systems serve to integrate process safety concepts into the ongoing activities of everyone involved in operations—from the chemical process operators to the chief executive officer. * * * Effective process safety management systems can, and do, vary a great deal in how they are implemented. However, they always address the need for managing the process safety-related aspects of technology, facilities, personnel, hazardous materials, and emergency responses.

The purpose of today's proposed rule is to require industry to develop such an integrated, holistic approach to managing the risks posed by the presence and use of regulated substances. EPA's proposed rule builds on process safety management elements included in OSHA's standard: process information, process hazard analysis, standard operating procedures, training, pre-startup reviews, mechanical integrity, management of change, accident investigation, safety audits, and emergency response. The implementation of these elements and the development of the RMP that will be submitted to governmental authorities will assist the owners and operators of facilities to identify hazards and construct a management system that addresses the hazards in a manner that is most effective for the specific circumstances and complexity of the facility.

EPA's proposed rule, particularly the prevention program, emphasizes the importance of management and management commitment for two reasons. First, without management commitment and an integrated system for managing process safety, it is unlikely that safety will be consistently recognized as a priority. Second, although for some facilities better or different technologies may be the most effective methods of addressing hazards, the technologies, by themselves, cannot ensure safety. Equipment must be maintained and workers trained in its proper uses. Changes in the process or procedures may affect the safe operation of technologies. Only with an integrated management system that continually evaluates the safety of a facility can the hazards posed by regulated substances be managed to minimize the likelihood of accidental releases.

Besides lessening the likelihood and severity of accidents, the implementation of process safety management can help facilities run more efficiently. Companies that have instituted risk management programs report reductions in injuries, lost-time accidents, mechanical breakdowns, maintenance costs, and material losses. Safety improvements will result in lower insurance costs. By preventing accidental releases, companies may minimize environmental damage and necessary cleanup costs. See Section X of this preamble for a discussion of the benefits of this rule.

B. Applicability

The CAA states that facilities covered by the risk management program regulations are those that have more than a threshold quantity of a regulated substance based on the final list and thresholds EPA will promulgate. In its list and threshold rule, EPA is proposing to exempt ammonia when used as an agricultural nutrient and held by a farmer. EPA requests comments on the proposed exemption and requests information on whether EPA should develop an accident prevention rule directed strictly to farmers using ammonia as a fertilizer. EPA notes that farm contractors who sell and apply ammonia as a fertilizer would be covered by today's proposed rule.

EPA estimates that approximately 140,425 facilities would be affected by today's proposed rule. Approximately 87,800 of those facilities would also be covered by OSHA's process safety management standard. The largest sectors covered by the rules would be cold storage facilities (which use ammonia as a refrigerant), public drinking water systems and publicly owned treatment works, manufacturers, and propane retailers. Some wholesalers and service industries would also be covered. See Section X of this preamble for a discussion of the estimated coverage and costs of this proposed rule.

The risk management program rules would affect only those areas at facilities where regulated substances are manufactured, processed, used, stored, or otherwise handled. If a facility uses a regulated substance in quantities above a threshold in only one process (e.g., wastewater treatment or refrigeration), only that process (as well as any unloading, transferring, and storing of the substance) would be covered by the rule. If a single process at a facility includes more than one regulated substance, a single process hazard analysis may cover all regulated substances for that process. EPA realizes that some facilities, such as batch processors (e.g., specialty chemical manufacturers), may have regulated substances on site for limited periods during the year; for example, a batch processor may use a regulated substance for only one month during the year. In some cases, these facilities may not be able to predict accurately which substances they will be handling. However, the Agency believes it is important for any facility that handles a regulated substance to have in place a program to manage risks and ensure safe operations. Because regulated substances would not be covered if they represent less than one percent by weight of a solution, EPA does not expect that the risk management program of publicly owned treatment works would need to cover the substances they receive from facilities for treatment.

C. Definitions

A "significant accidental release" means any accidental release of a regulated substance that has caused or has the potential to cause offsite consequences such as death, injury, or adverse effects to human health or the environment or to cause the public to shelter in place or be evacuated to avoid such consequences.

"Worst-case release" would mean the loss of all of the regulated substance from the process in an accidental release that leads to the worst offsite consequences.

D. Risk Management Program Elements

The Clean Air Act mandates that the risk management plan document three

elements: a hazard assessment, a prevention program, and an emergency response program. This section discusses the elements EPA is proposing for the risk management program to develop each of the plan requirements.

Hazard Assessment

As discussed above, the Clean Air Act requires a hazard assessment that includes evaluation of a range of releases including worst-case accidental releases; analyses of potential offsite consequences; and a five-year accident history. The language in the Conference Report suggests a more extensive assessment that would require a formal process hazard analysis (e.g., basic data on the source, identification of potential points of release, review of the efficacy of release and control measures). To allow EPA's prevention program requirements to parallel OSHA's process safety management standard, EPA is proposing to separate the offsite consequence analysis and five-year accident history from the formal process hazard analysis requirement. The proposed rule would require a hazard assessment that examines a range of accidental release scenarios, selects a worst-case accidental release scenario, analyzes offsite consequences for selected release scenarios including worst case, and documents a five-year history of significant accidental releases and accidental releases with the potential for offsite consequences. The other elements suggested in the Conference Report would be included under the prevention program in the process hazard analysis requirement.

EPA is proposing that facilities complete a hazard assessment for each regulated substance present above the threshold quantity. Facilities that use the regulated substance above its threshold in several locations or processes would need to evaluate a range of accidental releases and determine a worst-case release scenario for each location. The range of releases should include only those events that could lead to significant releases (i.e., accidental releases that have the potential to cause offsite death, injury, or serious adverse effects to human health or the environment). EPA requests comments on this issue.

EPA is proposing to define the worst-case release as the instantaneous loss of all of the regulated substance in a process, with failure of all mitigation systems (active and passive). EPA recognizes that this definition may require facilities to consider release scenarios that are highly unlikely. Such a definition will, however, define for the public the extreme worst-case. The proposed definition will also reduce the burden on regulated facilities; a requirement for analysis of a "credible worst-case" would lead to more analyses and documentation to defend the selected scenario. In addition, if each facility defined its own worst-case, local authorities could find it difficult to compare the results. EPA requests comments on the worst-case definition.

The Agency recognizes that this approach differs from the approach EPA used in its *Technical Guidance for Hazards Analysis* for local planners to assess credible worst-case releases for purposes of screening out situations with little or no impact. The credible worst case in the guidance assumed that the entire quantity of a substance was released from the largest vessel or group of interconnected vessels. Gases were assumed to be released in 10 minutes while liquids were assumed to be spilled on the ground or in a diked area and allowed to volatilize. Downwind impacts were assessed using conservative meteorological conditions. The Agency still supports this approach for screening, however, the methodology does not fully account for site-specific conditions that affect the rate of release. For example, gases may be stored in a liquefied state or a liquid may be handled in large quantities at higher than ambient temperatures giving much different release rates. The Agency believes that the worst-case analysis should account for site-specific conditions and physical chemical properties.

The Agency considered defining worst case as the instantaneous loss of the regulated substance from the largest containment vessel or pipeline on site. This approach is similar to the Technical Guidance approach. However, because the threshold quantity applies to the quantity in a process and the definition of a process defines the vessels and piping to be considered, the worst case should reflect the accidental release that could occur from catastrophic vessel and piping failures. The Agency requests comments on this approach.

In addition to the worst-case release scenarios, EPA would require facilities to analyze other more likely significant accidental release scenarios for each process in which the regulated substance is used above the threshold quantity. The proposed rule specifies several possible accident causes that facilities should consider when defining these more likely release scenarios. The list, however, should not be viewed as all inclusive. Each facility should examine its processes to determine the event or sequence of events that may lead to significant accidental releases. When examining these potential release scenarios, facilities would be allowed to assume that passive mitigation systems, such as containment dikes, functioned properly. Active mitigation systems, such as excess flow valves, fail-safe systems, scrubbers, flares, deluge systems, and water curtains, would be assumed to fail. EPA requests comments on this approach. The Agency plans to issue guidance on the evaluation of a range of accidental releases and determination of the worst-case scenario.

The proposed rule does not specify the number of other more likely significant accidental release scenarios facilities would be required to analyze. Although this approach provides flexibility, it may create uncertainty about what EPA will consider an adequate number of scenarios. EPA requests comments on whether it should specify a minimum number of scenarios to be analyzed, whether the minimum should vary with the complexity of the facility, and what the minimum(s) should be.

Once the worst-case and more likely significant accidental release scenarios are identified, the facility would be required to analyze the potential offsite consequences associated with these scenarios. The offsite analyses would estimate, using models or other approaches specific to each substance, the possible rate of release, quantity released, and duration of the release, and the distances in any direction that the substance could travel before it dispersed enough to no longer pose a hazard to the public health or environment. Facilities would be required to analyze the releases under average weather conditions for the facility and worst-case weather conditions, which would be defined as a wind speed of 1.5 meters per second and F stability (moderately stable weather conditions). For flammables and explosives, the analyses should consider the distances in all directions that might be affected by pressure waves, fire, or debris. The analyses would also identify all populations that could be affected by such a release, including sensitive populations (e.g., schools, hospitals), and would detail potential environmental damage. EPA requests comments on the level of detail needed to define the population potentially exposed.

The fate and transport of the regulated substances can be evaluated using air dispersion models. EPA has published guidance on conducting similar analyses in its *Technical Guidance for Hazards Analysis*, much of which could

be useful in developing the offsite consequence analyses. Computer models to estimate the impacts of vapor cloud explosions also are available. EPA, the Department of Transportation (DOT), and the Federal Emergency Management Agency have developed a model—the Automated Resources for Chemical Hazard Incident Evaluation (ARCHIE)—for vapor cloud explosion evaluation. The World Bank's WHAZAN model also evaluates this type of incident, as do other commercially available models. Simple equations can be used to calculate the impacts of explosions at various distances. EPA plans to develop additional guidance to assist facilities in analyzing offsite impacts.

Although the worst-case scenario is specifically defined, facilities are likely to use different models and approaches to estimate offsite impacts. In addition, facilities may need to use different models and analytical techniques to account for site-specific conditions in assessing offsite impacts associated with other scenarios. The Agency recognizes that facilities will need to have inhouse expertise or hire consultants with such expertise to complete these offsite impact analyses. This may pose a significant resource burden on some facilities, and the different approaches and models can make the offsite consequence results more difficult for local emergency planners to use. The Agency is working on ways to minimize this burden and make the results useful for local emergency planners. For example, the statute requires the Administrator to issue RMP guidance and model RMPs. The Agency is considering the development of a set of simple, generic tools that would be included in the guidance and that could be used for the assessment of offsite impacts. EPA could develop, for example, a generic methodology for assessing the offsite impacts similar to the methodology included in the *Technical Guidance for Hazards Analysis* cited above. Using a generic methodology for assessing the offsite impacts would allow a more direct comparison among facilities of potential offsite consequences. At the same time, this approach could reduce the resource burden imposed by the rule on many facilities, particularly smaller businesses by reducing the need for consultants to perform the offsite consequence analysis.

The Agency recognizes the limitations associated with simple, generic tools that will need to cover a potentially wide variety of scenarios. It would be difficult to construct a generic methodology which includes assumptions about the characteristics of chemicals, the range of chemical processes (e.g., conditions involving high temperatures and pressures), and other site-specific parameters. As a result, a generic methodology will generally be less sensitive to these conditions (or attributes) and may yield overly conservative or less realistic estimates of offsite impacts. The Agency requests comments on this approach and requests input on possible innovative ways to assist facilities in offsite impact analysis that might reduce the burden and provide meaningful, useful results.

Specific information on the worst-case scenario will help public emergency planners and responders recognize the maximum hazard potential surrounding the facility. The Agency recognizes, however, that the worst-case scenario may often be highly unlikely in comparison to other release scenarios with lesser potential consequences. Focusing on the worst-case scenario alone, therefore, could lead public agencies and the public to overestimate the threat posed by a facility. For this reason, EPA believes that facilities must examine a range of events in addition to the worst-case scenario and communicate information on these events to public agencies and the public to provide additional information on the hazards posed by the facility. In addition, EPA does not want facilities to focus solely on the worst-case release because other release scenarios are of concern, are generally far more likely than a worst-case release scenario, and must be addressed in the prevention program. Therefore, EPA is requiring facilities to analyze hazards associated not only with the worst-case scenario, but also with more likely significant releases.

EPA would require that facilities update the offsite consequence analyses every five years, with the RMP update, or sooner if changes at the facility or its surroundings might reasonably be expected to make the results inaccurate to a significant degree. For example, a substantial increase or decrease in the quantity of a regulated substance could significantly change the distance a substance could travel before dispersing and posing no hazard. Major changes in housing or land-use patterns, such as the construction of new, large-scale housing developments or commercial areas, could change substantially the population potentially affected.

A final element of the hazard assessment specified in the Act is a five-year history of releases of regulated substances. EPA interprets the accident history requirement to cover significant accidental releases and incidents that had the potential for offsite consequences because CAA section 112(r) is directed at preventing such releases. EPA is proposing to require the history to document releases that caused or had the potential to cause offsite consequences. As mandated by statute, the history must include the substance and quantity released, the concentration of the substance when released, and the duration of the release. EPA is also proposing that the date of the release, time of the release, and any offsite consequences (e.g., evacuations, injuries, environmental effects) be included. EPA believes that for releases of toxic substances, most of the releases that meet the criteria are already reported to the Federal or state governments under CERCLA and SARA Title III. Therefore, development of the five-year history of significant accidental releases would create little additional burden on facilities beyond maintaining records.

Prevention Program

The Act requires that the risk management plan include a prevention program that covers safety precautions and maintenance, monitoring, and employee training measures. Although the Act's requirements for the prevention program are general, a consensus exists among industry, professional organizations, labor, public interest groups, and government on what constitutes a good risk management program. In its *Review of Emergency Systems*, EPA listed elements of good management programs. The American Institute of Chemical Engineers (AIChE) has published *Guidelines for Technical Management of Chemical Process Safety*, which includes basically the same elements. Delaware, New Jersey, California, and Nevada have each adopted state risk management program regulations that again cover a similar set of elements. The OSHA chemical process safety management standard covers this same set of elements. Labor and environmental groups recommended similar requirements to Congress and the agencies. Therefore, the prevention program EPA is proposing today consists of elements that the Federal government and several state agencies, as well as trade associations, professional organizations, labor, and public interest groups believe are necessary in order to have an integrated approach to understanding and managing risks associated with regulated substances at a facility. The elements of this integrated approach are

consistent with and fulfill the requirements of the statute.

EPA is proposing a prevention program that adopts and builds on OSHA's process safety management standard and covers nine procedural areas: Process hazard analysis, process safety information, standard operating procedures (SOPs), training, maintenance, pre-startup review, management of change, safety audits, and accident investigation. The degree of complexity required for compliance for each element will depend on the complexity of the facility. For example, development of process safety information would take far more time and would require greater expertise at a large petrochemical facility than it would at a small drinking water system. As they develop plans for implementing the elements, facility owners or operators would have to consider the complexity of their chemical use, the hazards potentially posed by the chemicals, and potential consequences of an accidental release.

The prevention program elements must be integrated with each other on an ongoing basis. For example, each time a new substance is introduced to a process or new equipment is installed, the process hazard analysis must be reviewed, SOPs updated, training and maintenance programs revised, with new training if needed. An investigation of a near miss or a safety audit may reveal the need for revised operating and maintenance procedures, which will lead to revisions to SOPs, training, and maintenance. The investigation or audit may also indicate a need to review the process hazard analysis. The management system should ensure that a change in any single element leads to a review of other elements to identify any impacts caused by the change.

Management System

Because it is essential that all of the prevention program elements be integrated into a management system that is implemented on an ongoing basis, EPA is proposing that the owner or operator of the facility designate a single person or position to be responsible for the development and implementation of the overall program. At facilities where individual elements of the program are handled by different people or divisions, the names or positions of the people responsible for each element would also be specified and an organization chart or similar document required to define the lines of authority. At a small facility, a single person may be responsible for all elements. At a large company, separate divisions may handle emergency response, training, and maintenance; SOPs may be developed separately for each process area; safety audits may be conducted by corporate officials. In such a situation, it is essential that the involved divisions communicate with each other regularly so that the people in charge of training know when SOPs have been revised and that the emergency response personnel know when changes to processes may affect the hazards in a location. The purpose of the proposed management requirement is to have facility management define a system that integrates the implementation of the elements and assigns responsibility for that implementation.

Process Hazard Analysis

The AIChE's *Guidelines for Hazard Evaluation Procedures* (AIChE, 1985) defines a hazard evaluation (also known as a process hazard analysis) as a procedure intended "to identify the hazards that exist, the consequences that may occur as a result of the hazards, the likelihood that events may take place that would cause an accident with such a consequence, and the likelihood that safety systems, mitigating systems, and emergency alarms and evacuation plans would function properly and eliminate or reduce the consequences."

A process hazard analysis involves the application of a formal technique, such as a "What If" or a hazards and operability study (HAZOP). (AIChE's *Guidelines for Hazard Evaluation Procedures* provides descriptions of these techniques.) Formal techniques provide a method for a rigorous, step-by-step examination of processes, process equipment and controls, and procedures to identify each point at which a mishap may occur (e.g., a valve failing, a gauge malfunctioning, human error) and examine the possible consequences of that mishap, by itself and in combination with other possible mishaps. The result of a properly conducted process hazard analysis is a list of possible hazards of the process at the facility that could lead to a loss of containment and release of a regulated substance. Process hazard analyses must be conducted by people trained in the techniques and knowledgeable about the process and facility being examined. Such evaluations usually require at least two people, with other experts contributing to the process when necessary; a HAZOP may require a core team of five to seven people. For a simple process, the process hazard analysis may take a day or two; for complex processes, the evaluation may take six weeks to three months.

Although each prevention program requirement is important, EPA considers the process hazard analysis the critical element in developing a risk management program. When EPA analyzed the data collected for the *Review of Emergency Systems,* it was clear that a substantial number of respondents did not recognize the hazards associated with either the chemicals involved or the processes used. For the most commonly used, high-volume chemicals, such as ammonia and chlorine, a large number of facilities were relatively unaware of the hazards involved. A process hazard analysis would help facilities identify hazards and ways to address them. For example, a 1989 explosion and fire at a facility in Baton Rouge, Louisiana, led to a partial loss of pressure, power, and fire water because the power, steam, and water lines were co-located with the lines carrying flammable gases. The losses complicated and prolonged the process of responding to the release, thereby increasing the damage caused by the release. Similar problems occurred at a facility in Norco, Louisiana, where an explosion led to the loss of all utilities. A thorough and properly done process hazard analysis should identify these types of potential hazards and allow facilities to determine how to mitigate the problems. Process hazard analyses also identify situations where major accidents due to control failure (e.g., pressure gauges, overfill alarms) could be prevented by redundant or backup controls or by frequent maintenance and inspection practices.

Many other elements of a risk management program should flow from, or at least be revised based on, the results of the process hazard analysis. Existing standard operating procedures, training and maintenance programs, and pre-startup reviews may need to be revised to reflect changes in either practices or equipment that derive from the process hazard analysis. The process hazard analysis may help define critical equipment that requires preventive maintenance, inspection, and testing programs. It may also help a facility focus its emergency response programs on the most likely and most serious release scenarios. For many facilities, the process hazard analysis may be necessary to help define the worst-case release scenario that generates the worst offsite consequences. A secondary benefit of the process hazard analysis is that it also can be used to identify pollution prevention opportunities. The same changes in procedures, equipment, controls, or chemicals that may lessen

the likelihood of an accidental release often increase the efficiency of operations and result in waste minimization. These changes may reduce costs for facilities by improving the consistency and quality of products and by decreasing the amount of waste that needs to be treated.

The proposed rule would require facilities to conduct process hazard analyses after determining a priority order for the analyses based on the degree of hazard posed by the processes covered by the rule; that is, the facility would have to conduct its analyses on the most hazardous processes first, where the degree of hazard is related to potential offsite consequences, operating history of the process, and the age of the process. Facilities would be required to use one or more of six techniques: What If, Checklist, What If/Checklist, HAZOP, failure mode and effects analysis, or fault tree analysis. Facilities could also use an equivalent methodology provided the facility could demonstrate that the methodology is equivalent to the listed methods.

The complexity of the process hazard analysis procedure will depend on the complexity of the processes to which it is applied. Any of the listed techniques can be used for simple and complex processes although, for simple processes, the simpler procedures, such as the What If, may be more appropriate. Facilities such as wholesalers who load, unload, store, and sometimes repackage regulated substances would be able to use a simple technique such as a checklist to ensure that the substances are stored and handled properly and that fire suppression systems are appropriate for the substances at the facility. Application of the more complex procedures, such as the HAZOP or fault tree, requires considerable technical expertise and may be more appropriate for complex processes, such as those at petrochemical facilities. In some cases, facilities will want to use several techniques; for example, a facility might start with a What If analysis to identify high hazard areas, then use a HAZOP or fault tree method to examine those areas in greater detail. EPA is planning to develop guidance to help facilities select and use process hazard analysis techniques.

The process hazard analysis would require facilities to conduct a systematic examination of the process and procedures to identify ways in which equipment malfunction, human error, or external events could lead to an accidental release. The evaluation would also review the efficacy of prevention and control measures to prevent accidental releases. The team conducting the process hazard analysis would include at least one person knowledgeable in the technique and one knowledgeable in the process. EPA requests comments on whether the requirement for a person knowledgeable in the technique should be waived for facilities using checklists and what if questions from a model RMP. The team would be required to submit findings and recommendations to the owner or operator, who then would have to document all actions taken in response to the findings and recommendations, including schedules for implementing changes. In response to the CAA's requirement that the prevention program include monitoring, EPA is proposing that the owner or operator investigate and document a plan for (or a rationale for not) installing systems to detect, contain, or mitigate accidental releases if such systems are not already in place. Because accidental releases can be limited or mitigated by the use of detection, secondary containment, and mitigation systems, facilities should consider whether the hazards they have identified could be addressed through such systems. The decision on whether such systems are the best way to address the hazard must, however, rest, in the first instance, with the facility's management. In some cases, monitors and detectors do not exist; mitigation systems may not be technically feasible for certain types of releases. In other cases, steps such as improved procedures and maintenance may provide a more cost-effective approach to controlling the hazards. The purpose of the requirement is to ensure that facilities consider the available options and find the best method for the facility to address accidental releases.

As required by the CAA, the process hazard analysis must be reviewed and updated periodically. EPA is proposing that the process hazard analysis be reviewed and updated at least every five years, which is the same interval specified in the OSHA process safety management standard.

Process Safety Information

The process hazard analysis must be based on up-to-date chemical and process information, including information on physical and chemical hazards, process technology (e.g., process chemistry, process parameters), and equipment (e.g., equipment specifications and design, piping and instrumentation drawings). As per OSHA, after the effective date of the rule, facilities would also have to document material and energy balances for new equipment in a process that involve a regulated substance above the threshold quantity to ensure that the equipment is appropriately designed for the process. The material balance is intended only for ensuring the proper design basis for the equipment and is not useful for process inventory accounting or measurement of chemical loss. For example, it is necessary to know the flow rate in mass per unit-time to properly design a heat exchanger; however, this flow rate does not give the mass of the substance consumed or lost in a reaction system. All required process safety information would apply only to affected equipment, not the facility as a whole. Chemical information is available from Material Safety Data Sheets (MSDSs) mandated under OSHA's hazard communication standard (29 CFR 1910.1200). The level of process technology and equipment information would vary with the type of facility. For warehouses, wholesalers, and service industries, little equipment information would be needed unless special equipment is used with the regulated substances. For manufacturers, more extensive information would be required, including flow charts, piping and instrumentation diagrams of the facility as it currently exists, and electrical, relief, ventilation, and safety system specifications.

Standard Operating Procedures (SOPs)

The results of the process hazard analysis, information developed during the design of a process, and industry and facility experience combine to define the proper way to conduct operations and maintain equipment. SOPs describe the tasks to be performed by the operator, the operating parameters (e.g., temperature, pressure) that must be maintained, and safety precautions needed for both operations and maintenance activities. SOPs must specify the consequences of deviations from safe operating limits (e.g., if the safe operating temperatures are between 100 and 150°C, the SOPs should indicate what happens if the temperature is above or below those limits). Written SOPs provide a guide to safe operations in a form that can be used by employees. Lack of SOPs and inadequate SOPs have been implicated in a number of catastrophic accidents. For example, improper maintenance procedures have been blamed for a release and explosion at a facility in New Castle, Delaware, in 1980, which killed six people, injured 27 others, and caused more than $63 million in property damage to the facility.

SOPs, which define the proper steps to take in these emergency situations,

provide a quick source of information that can prevent or mitigate the effects of accidents. SOPs also provide workers and management a standard against which to assess performance; the procedures clarify for both operators and supervisors how operations should be carried out at the facility. Application of SOPs can result in more cost-effective operations by ensuring that operators adhere to procedures that maximize both the safety and efficiency of a process.

EPA is proposing that each facility develop written SOPs for each process and operation involving the regulated substance above the threshold. The SOPs would include instructions on steps for each operating phase (e.g., initial startup, normal operation, emergency shutdowns, normal shutdowns, emergency operations), operating limits, safety and health considerations, and safety systems. The facility would also be required to provide for control of hazards during operations involving lockout/tagout, confined space entry, and opening process equipment or lines. The facility would also need SOPs to control entrance to the facility by support personnel.

The level of detail included in the SOP should be appropriate for the operation covered. For example, instructions for proper storage of chemicals may be relatively brief, while procedures for routine startup of a complex process may require considerable detail to ensure that each action required is detailed and explained. EPA emphasizes that the SOPs should be usable by the operators in running the process; that is, the SOPs should be written in a language and at a level appropriate for the operators.

Training

Training provides employees with the information needed to understand what they must do to operate safely and why safe operations are necessary. The required training program is the key to ensuring the effectiveness of other program elements such as SOPs, maintenance programs, pre-startup reviews, and emergency response. Refresher training ensures that employees are reminded of appropriate procedures periodically. Training programs often provide immediate benefits to facilities because trained employees have fewer accidents, damage less equipment through mishandling, and conduct more efficient operations. Inadequately trained maintenance workers have been implicated in the 1989 disaster in Pasadena, Texas, which killed 23 people, injured 130 others, and destroyed $750 million of property at the facility. In 1988, at a plating facility in Auburn, Indiana, untrained workers used hydrochloric acid to clean a tank that had held zinc cyanide. The resulting hydrogen cyanide killed five workers and sent more than ten others to the hospital.

The proposed rule would require each owner or operator to train employees in applicable and appropriate SOPs and provide refresher training at least once every three years. Employers would also be required to ensure that each employee is competent to operate the process safely. EPA is not proposing specific standards for the training requirements because the Agency believes that each facility should have the flexibility to develop a training program that reflects its individual situation. Facilities that handle but do not process regulated substances (e.g., many facilities in the non-manufacturing sector) may provide relatively brief training because the procedures to be taught involve a few simple steps. For a complex manufacturing facility, training may take much longer for some operations. For some facilities, formal group training programs may be feasible; for small facilities, one-on-one training may be more appropriate. The form of the training program is less important than that relevant training is delivered in a manner most likely to be understood. Facilities would be required to document their training programs to indicate when employees were trained. EPA is also not proposing specific means of ensuring that the training is understood, such as testing, but would simply require that the owner or operator develop a system for ensuring competence and document that system. The proposed rule would require facilities to evaluate the effectiveness of the training and develop a schedule for reviewing and revising the training. EPA requests comments on this approach to training requirements.

Maintenance (Mechanical Integrity)

The Act specifies that the prevention program must include requirements for equipment maintenance. Preventive maintenance, inspection, and testing of equipment are critical to safe operations at a facility. Waiting for equipment to fail often means waiting until an accidental release occurs before addressing a problem. This approach is not acceptable, especially considering the extremely hazardous characteristics of the regulated substances. Preventive maintenance, inspection, and testing are needed because many of the potential failures are not obvious from visual inspections. For example, failed alarm systems or detectors may need to be tested to determine if they are functioning properly; detectors and monitors, which can provide early warnings of releases, must be calibrated periodically; corrosion of vessels and piping, a hazard with many chemicals, can be detected through testing well before the vessels or pipes fail; scheduled cleaning, oiling, or replacement of parts can prevent equipment failure. A large number of the accidents reported in the Marsh and McLennan review of the 100 largest losses in the petrochemical industry (Large Property Damage Losses in the Hydrocarbon-Chemical Industries, a Thirty-Year Review, 1990) were the result of equipment failure that might have been avoided through preventive maintenance. A 1978 fire and explosion at a Texas City, Texas, facility that led to almost $100 million in property damage was attributed to instrument failure and a faulty relief valve. A 1989 accident in Richmond, California, that injured workers and responders was caused by a failed weld.

Besides preventing accidental releases, maintenance programs also provide direct benefits to facilities by decreasing the amount of costly down-time that can result from failed equipment. Even in incidents where there is serious property damage, the lost business costs can be significantly greater than the property damage resulting directly from an accident.

EPA is proposing that facilities develop and implement a maintenance program, with written maintenance procedures and training for maintenance workers, for equipment and controls whose failure could lead to a significant accidental release. This equipment may include pressure vessels, storage tanks, piping systems, relief and venting systems, emergency shutdown systems, and controls such as monitors, alarms, sensors, and interlocks. Covered equipment should be inspected, tested, and subject to preventive maintenance. The intervals for such maintenance would depend on the equipment and how it is used. Manufacturers' recommendations may be used to set such schedules and determine testing procedures, but the applicability of those recommendations should be reviewed in light of industry and facility experience and the results of the process hazard analysis. In some cases, facilities will need to schedule more frequent inspections based on their specific uses or experience with equipment failure rates, or because the process hazard analysis indicated that

failure of a particular piece of equipment could result in a catastrophic loss of containment. Facilities would be required to replace or repair in a timely manner any equipment that is found to be outside acceptable limits. Facilities would also be required to develop procedures to ensure that replacement equipment and parts meet design specifications. Owners and operators would be required to document their maintenance program, including the written procedures, the schedules used, and the results of each inspection and test performed. The level of complexity and detail in the maintenance program would be directly related to the complexity of the operations and equipment.

Pre-Startup Review

Startup of a new or modified system can be a particularly hazardous time for facilities, especially for complex processes and those that require high temperatures, high pressures, or potentially exothermic reactions. However, even simple facilities need to conduct such reviews. For example, before a chemical distributor accepts a new regulated substance, the distributor should check that the fire suppression system is appropriate for the substance, that workers know how to handle and store the substance, and that emergency response procedures are in place to handle an accidental release.

To help ensure safety during startup, EPA is proposing that all critical systems be checked prior to startup of a new or substantially modified process. A new system would require a process hazard analysis prior to startup. A substantially modified process would include any process where the changes to the process are significant enough to require a reevaluation of the hazards involved because new hazards may have been created as a result of the changes. This review would include a list of items that operators would need to check or test before beginning an operation. Each pre-startup review should ensure that SOPs are in place and training has been conducted.

Management of Change

Chemical processes are integrated systems; changes in one part of the process can have unintended effects in other parts of the system. For example, installation of better seals may increase the pressure in vessels. It is, therefore, important that all changes in processes, chemicals, and procedures be reviewed prior to their implementation to identify any potential hazards that may be created by the modification. Although most changes at facilities are intended to improve safety and efficiency, any modification can have unintended effects and requires a specific review of the safety implications of the change. Other process modifications are instituted in response to a specific problem that arises unexpectedly. It was such an unexamined change in the installation of a temporary bypass at Flixborough, England, that led to the 1974 release and explosion that killed 28 employees, injured 89 people, and damaged almost 2,000 properties off site.

Therefore, EPA is proposing to require management of change procedures. These procedures are important for two reasons: (1) They help facilities evaluate changes and prevent accidents caused by unintended effects from alterations of equipment, procedures, and chemicals; and (2) they ensure that the process safety information and process hazard analyses are kept up-to-date. Under the proposed rule, the owner or operator of a facility would be required to evaluate every change in equipment (except changes that satisfy the design specifications of the device replaced), processes, chemicals, or procedures to ensure that the technical basis of the change is documented and that the change does not create new hazards; if new hazards are created or if the change results in different procedures being needed, these hazards and changes would need to be addressed prior to implementation. Training, SOPs, and maintenance programs may need to be revised as a result of changes; the process hazard analysis and hazard assessment may need to be revised as well.

Safety Audits

An important tool in ensuring that the process safety management elements are being implemented is the periodic safety audit. The safety audit provides management with a mechanism for oversight of the implementation of the safety elements and of the overall safety of the facility. Safety audits may take many different forms; some facilities use audits to check on compliance with specific regulations, some do spot-checks of safety practices, while others review all key aspects of safety management.

The proposed regulations would require facilities to conduct a complete safety audit once every three years to ensure that the process safety management elements are in place, updated, and being implemented properly. Although compliance with the proposed elements will provide an indication of safe operations, other considerations are important as well. For example, it is not enough to develop and train employees on standard operating procedures; the facility must check to see that procedures are being followed. Therefore, a safety audit is more than a review of regulatory compliance; it is a check, by management, that the facility is being operated safely. Facilities would be required to document their audits in a report that includes findings and recommendations. Management's response to the findings would also be documented. EPA chose the three-year interval to be consistent with the OSHA requirement for safety audits. EPA notes that for large facilities and those with a number of covered processes, the audit would not need to be performed at one time. The facility may choose to audit different processes on different schedules. The proposed rule would require only that over each three-year period, all covered processes are audited.

Accident Investigation

Accidents can provide valuable information about hazards and the steps needed to prevent accidental releases. Many times, the immediate cause of an accident is the result of a series of other problems that need to be addressed to prevent recurrences. For example, an operator's mistake may be the result of poor training, inappropriate SOPs, or poor design of control systems; equipment failure may result from improper maintenance, misuse of equipment (operating at too high a temperature), or use of incompatible materials. Without a thorough investigation, facilities may miss the opportunity to identify and solve the root problems.

Therefore, EPA is proposing that facilities investigate each significant accidental release. As discussed above, a significant accidental release is one that caused or had the potential to cause offsite death, injury, or serious adverse effects on human health and the environment. EPA notes that significant accidental release does not include near misses. EPA agrees with AIChE that "while it is important to investigate all incidents, as the lessons learned in preventing future incidents are not at all related to the magnitude of the occurrence, it is unquestionable that, at the very least, 'major incidents' should be investigated" (Guidelines for Technical Management of Chemical Process Safety). EPA encourages facilities to investigate all accidental releases, but would require only that significant accidental releases be investigated. EPA defines significant accidental release as "any accidental

release of a regulated substance that has caused or has the potential to cause offsite consequences such as death, injury, or adverse effects to human health or the environment or to cause the public to shelter-in-place or be evacuated to avoid such consequences." EPA requests comments on this approach to define the range of incidents requiring accident investigation. In particular, the Agency is interested in whether this definition covers too broad or too narrow a set of incidents, and requests comments on any alternative definition that provides greater regulatory certainty.

The accident investigation would determine, to the extent possible, the initiating event that led to the release, and the root cause(s); EPA emphasizes that identification of the root causes (e.g., misdesigned piping run) may be more important than identification of the initiating event (e.g., failed flange). The investigation would be summarized in a report to management; the report would include recommendations for steps that need to be taken to prevent recurrences (e.g., piping design review) and improve emergency response and mitigation measures. Management would be required to document its decisions on the recommendations. As with the management of change procedures, the degree of the accident investigation and documentation will vary with the potential seriousness of the accident. For example, a minor release that was prevented from becoming a major release only by prompt action of operators may require more investigation than a large release that can be quickly attributed to single failure (e.g., a faulty high-level alarm).

EPA is also concerned about near misses. Investigation of such incidents may provide facilities with important information on problems that should be addressed before a significant accidental release occurs. Information on near misses could help the Agency and facilities understand how accidents occur and how they can be prevented. EPA does not consider a release that occurred, but did not affect the public or the environment because of favorable weather conditions at the time of the release, a near miss. EPA considers this incident a significant accidental release and, therefore, it needs to be investigated. A near miss would refer to mishaps that did not result in a release for some reason other than explicit system design. For example, a release from a pressure relief valve that is vented to a scrubber would not be a near miss because the system is designed to ensure that relief valve releases are contained and treated. A near miss is a mishap that did not result in a release because of employee actions or luck. For example, a runaway reaction that is brought under control by operators is a near miss and should be investigated to determine why the problem occurred. EPA requests comments on whether facilities should be required to investigate near misses and on how near miss should be defined.

Emergency Response

CAA specifies that the emergency response program include actions to be taken to protect human health and the environment in response to a release, including informing the public and local agencies, emergency health care, and employee training. Emergency response procedures are a necessary part of a risk management program because accidents do happen even with the best safety systems in place. Emergency response procedures can reduce the severity of a release and protect employees, emergency responders, and the public from harmful exposure to the regulated substances. As discussed above, the damage from accidents and risks to responders can be increased if releases have the potential to damage or destroy utilities and equipment needed to respond to the incident. The emergency response plan helps define these worst cases and develop an approach to prevent potential problems.

EPA is proposing that each facility develop an emergency response plan that defines the steps the facility and each employee should take during an accidental release of a regulated substance. The plan would include both evacuation or protective action procedures for employees not directly involved in the response to the release, and the actions taken by employees responsible for responding to and mitigating the release. All employees would be trained in applicable emergency response procedures. The emergency response plan would include descriptions of all response and mitigation systems.

The emergency response plan would also include procedures for notifying the public of releases and of appropriate protective actions and procedures for notifying public agencies. The facility would be required to develop information on proper first-aid and emergency medical care necessary to treat accidental human exposure. EPA is also proposing that the facility emergency response plan be coordinated with the local emergency planning committee (LEPC) plans required under EPCRA for chemical releases. Upon request of the LEPC, the facility would be required to provide the LEPC with information necessary to develop and implement the LEPC plan. This requirement is a restatement of the mandate of EPCRA section 303(d)(3) and would be included in this rule to ensure that the facility and community planning efforts are coordinated, which will improve both plans, thereby facilitating effective response actions when releases occur. Facilities would be required to develop written procedures for the use of emergency response equipment and for its maintenance, inspection, and testing. Facilities would be required to conduct drills or exercises to test facility plans and revise the plans based on the results; facilities would be responsible for determining the number and type of drills or exercises they need to conduct and the frequency of these tests.

Most facilities are already required to have at least part of the emergency response plan in place. OSHA requires emergency action plans (29 CFR 1910.38(a)). Facilities that are subject to OSHA's and EPA's Hazardous Waste Operations and Emergency Response (HAZWOPER) rules (29 CFR 1910.120 and 40 CFR Part 311) also must conduct training for their facility response personnel. Facilities covered by EPA's RCRA regulations (40 CFR Parts 264 and 265) or by Spill Prevention Control and Countermeasure rules (40 CFR Part 112) also are required to have many of the emergency response elements in place. EPA requests comments on how the proposed requirements can be best integrated with these existing programs to minimize duplication.

E. RMP and Documentation

EPA is proposing that a risk management plan (RMP) be submitted to the implementing agency, Chemical Safety and Hazard Investigation Board, the SERC, and to the LEPC, and be made available to the public. EPA is proposing to make a distinction between the RMP that is submitted to these agencies (and through them to the public) and the documentation supporting the implementation of the risk management program elements that a facility would be required to maintain on site for inspection by EPA and other agencies.

The purpose of the RMP is two-fold: First, to provide government agencies and the public with sufficient information to understand the hazards at the facility and the approach the facility is using to manage the risks and, second, to have the facility develop an ongoing system for managing implementation of safety practices and procedures. The information provided

in the RMP will assist government agencies in assessing the quality and thoroughness of a facility's risk management program. Because of the large number of potentially affected facilities, it is unlikely that EPA or the state implementing agency will audit a substantial percentage of the facilities in any one year. Consequently, it is important that government agencies have enough information in the RMP to identify those facilities that pose the greatest potential hazards, either because of the quantity and kind of substances in use or because of prevention practices. The RMP information also will assist local emergency planners. Under SARA Title III, local planners have received information on substances and quantities at facilities. The RMP will add to these data by providing information on hazards and practices. For example, a large facility with a well-implemented risk management system may pose less of a hazard than smaller facilities, with smaller quantities of chemicals, that have weak programs. With this information, local planners will be better able to focus on facilities that pose the greatest risk and target their work with facilities to improve prevention practices. The public will be able to identify hazards and risk management procedures from the RMP without having important information obscured by detailed submissions.

The second purpose of the RMP is to assist facilities in integrating the risk management program elements. Each facility will approach the management of its hazards in a way that is appropriate for its specific situation. For small facilities, one person may be responsible for implementing and integrating the elements. In large corporations, many of the elements may be handled by different operating divisions. The RMP would include information on the management system the facility uses to integrate the elements and ensure responsibility for the program. EPA thinks that this is an essential step in successful implementation of the program because unless management is accountable for safety and makes it a priority, other employees may not consider safety important. Equally important, by reporting on how it is addressing each of its major hazards, the facility would have to explain how it has applied the various risk management program elements to prevent accidental releases.

The proposed rule would require facilities to submit an RMP that includes the following information:

- A copy of the registration form;
- A summary of the offsite consequence analyses including worst-case and other more likely release scenarios;
- The five-year history of significant accidental releases for each regulated substance;
- A list of the major hazards defined through the process hazard analysis, the consequences of failure to control each major hazard, the steps management is taking or planning to take to address the hazards, and an implementation schedule for each step listed;
- A summary of any risk management program elements not covered under the steps taken to address specific hazards (e.g., if training has not been revised to respond to any listed hazard, a summary of the training program would be needed);
- A summary of the facility's emergency response program, including dates and schedules for drills completed and planned, information on coordination with the public, procedures for notifying and alerting the public of a release, and the name of person responsible for coordinating with public agencies;
- A description of the management system used to implement and integrate the elements of the hazard assessment, prevention program, and emergency response program; and
- A certification of the accuracy and completeness of the information.

EPA envisions the RMP to be comprehensive and succinct. The offsite consequence analysis information should be a summary of the documentation already developed during the hazard assessment. To keep the size of the RMP manageable, EPA requests comments on whether it should specify a maximum number of release scenarios a facility may submit as part of its offsite consequence analyses. Complex facilities may conduct a substantial number of such scenarios; submission of every scenario analyzed could overwhelm the user and make the information less useful.

The accident histories can be presented as tables or lists. EPA is not proposing that facilities include every hazard identified through a process hazard analysis, but rather that the RMP include only those hazards that have the potential to lead to significant accidental releases with offsite consequences. For each item included in the RMP, the documentation required by the rule would serve as supporting information.

The information provided should be brief. For example, if corrosion in piping is a hazard, the facility would list corrosion in piping followed by any steps taken to control corrosion and to ensure that corroded pipes are replaced before a release occurs. These steps might include periodic ultrasonic testing, replacement of pipes, or something similar. For facilities where the steps taken to address hazards apply to several hazards, the hazards can be grouped under the steps. For example, if revised operating procedures and training were used to control and prevent a number of hazards, the facility could list operating procedures and training followed by the hazards to which they apply. In this way, duplicative entries can be minimized. The length of the list of hazards would vary with the complexity of the facility and with the current state of prevention practices.

EPA is proposing an RMP that summarizes the program because the Agency believes that the information of most use to the public and local agencies will be related to the hazard assessment and consequence analysis, as well as general descriptions of hazards at the facility. Other detailed information is likely to be of little interest and, if submitted, could overwhelm the ability of local agencies to manage and use the information. EPA also believes that the RMPs should not include information that facilities can legitimately claim as confidential business information under CAA section 114(c). The RMP should provide local and state agencies and the public with sufficient information to determine if additional information is needed. The information will be available, if needed, to EPA or state officials conducting audits or compliance inspections. EPA requests comments on the RMP and particularly on the information communities, local authorities, and public interest groups will find useful in assessing the hazards posed by facilities. EPA also requests comments on the kinds of information facilities consider confidential (and how facilities can report on hazards without revealing confidential data).

EPA is proposing that the RMP shall be submitted to the Chemical Safety and Hazard Investigation Board, to the implementing agency, the state, and to local emergency planning committees. EPA asks for comments on other local agencies that may want a copy of the RMP. EPA is concerned about the burden such submissions may place on the entities receiving the RMPs. If each RMP is submitted, the Board could receive more than 140,000 plans; some states could receive several thousand documents. At the local level, the number could vary from a few to more than 50 plans.

EPA is considering three options that might lessen the burden. First, EPA could develop computer software that would provide facilities with standard formats for completing the information required in the RMP. The RMP could then be submitted on disk in a format that would allow the government agency to locate information quickly. EPA recognizes that while this approach might ease storage problems and related burdens for the Board and the states, many local entities are not equipped to receive documents on disk. In addition, many of the smaller facilities covered by the rule may not yet be computerized. Therefore, this approach would work for only part of the facilities and recipients. The second option would be to allow local authorities to designate the state as the receiving entity, thereby lessening the burden on the local authorities. The third approach would be to require that the RMP be submitted only on request from the Board, state, or local entity. Facilities would be required to develop the RMP and keep a copy available on site, but would submit it only if requested. EPA solicits comments on these approaches and specifically asks for suggestions on other ways EPA might be able to facilitate the management and use of the RMP information by state and local agencies.

Section 112(r)(7)(B)(iii) requires EPA to establish, by rule, a system for auditing RMPs and requiring revisions where necessary. EPA is proposing that facilities be selected for audits based on a number of criteria. Specific accidents at a facility or the facility's five-year history of accidents would be one criterion used to select a facility for an audit; similarly, if other facilities in the same industry show a pattern of accidents with regulated substances, a facility might be selected for an audit to ensure that it is addressing the kinds of hazards causing releases at similar facilities. The quantities of regulated substances or the presence of specific regulated substances would also be criteria. For example, facilities with high volumes of one or more regulated substance might be selected, or the audits might focus on particular substances. The location of the facility would be a criterion for selection; facilities close to populated areas, or sensitive populations or ecosystems might be audited because of the potential hazard they pose. The hazards identified in the RMP would be a criterion for selection. Finally, facilities might be randomly selected to provide neutral oversight. EPA requests comments on the proposed criteria. EPA also requests comments on whether major facilities should be audited on a regular schedule (e.g., every three to five years).

The audit is designed to cover the adequacy of the RMP. If, based on the audit, the implementing agency decides that revisions to the RMP are needed, the agency would issue a preliminary determination explaining the basis for the revision and a timetable. This preliminary determination shall include an explanation for the basis for the revisions, reflecting industry standards and guidelines (such as AIChE/CCPS guidelines and ASME and API standards) to the extent that such standards and guidelines are applicable, and shall include a timetable for their implementation. The owner or operator would have 90 days to respond to the preliminary determination in writing, either agreeing to implement the changes or rejecting the revisions, in whole or in part, with an explanation for any rejection. In its response, the owner or operator may develop substitute revisions addressing the same issues addressed in the preliminary determination. After providing the owner or operator an opportunity to respond, the agency would issue a final determination, which may adopt or modify proposed revisions, or may adopt substitute revisions proposed by the facility. A final determination that rejects a substitute revision would explain the reason for the rejection. Thirty days after the final determination, the facility would be considered to be in violation of the rule unless the RMP is revised. The public would be assured access to preliminary determinations, responses, and final determinations.

In addition to the RMP, the facility would be required to maintain onsite documentation of its process hazard analysis, offsite consequence analysis, process information (e.g., P&IDs, MSDSs), training and maintenance programs, SOPs, pre-startup review list, management of change procedures and records, compliance audits, accident investigation procedures and reports, and emergency response plans. This documentation would include schedules for starting and completing actions based on the recommendations of the process hazard analysis, safety audit, and accident investigation. These documentation requirements are similar to those imposed under OSHA's standard.

F. Registration

Information Required

The Act requires that RMPs be registered with EPA prior to the effective date of the regulation. EPA is proposing that, within three years of the date of publication of the final rule, all facilities register with EPA if they have a regulated substance in a quantity that exceeds the threshold quantity. EPA is proposing a simple registration that would require most facilities to complete a one-page form; facilities with large numbers of regulated substances may need an additional page to list the substances. The registration would ask for the name and address of the facility, the facility's Dun and Bradstreet number, the regulated substances on site, quantities of the substances (in ranges), and the facility's Standard Industrial Classification (SIC) code(s) that apply to the use of each substance. If, at any time after the registration is submitted, the information becomes inaccurate, the facility would be required to file an amended registration within 60 days with the Administrator and the implementing agency.

The association of SIC codes with specific substances would allow EPA to identify the types of processes in which a facility may use the substance without requiring the facility to provide detailed information during registration. The Dun and Bradstreet number is a common identifier for facilities and would allow EPA to cross-reference the data with other EPA databases. Most of the information requested is already reported under SARA Title III. The reporting ranges proposed are the same ranges used for SARA Title III reporting.

EPA is proposing a registration requirement for several reasons. First, the statute requires that RMPs be registered with EPA. Second, EPA is required to establish a system for auditing RMPs. To implement an auditing system, EPA and state agencies that implement the program need to know which facilities are covered by the rule as well as the chemicals they have on site. Facilities may be selected for auditing based on location, quantities of chemicals on site, specific chemicals, or other criteria. A central source of information on which facilities are covered, for which chemicals, and in which industries is essential to apply criteria for selecting facilities for audits in an equitable manner. Finally, although many of the facilities file similar information with EPA, no current source of data includes all facilities likely to be affected by the proposed rule. EPCRA section 313, for which a national database exists, covers only manufacturers and does not include many of the chemicals proposed for listing. Some of the facilities will be permitted under RCRA, but most will

not be. Except for facilities not covered by OSHA's Hazard Communications Standard, most other facilities potentially affected by this proposed rule are also covered by EPCRA section 312. However, EPA does not receive section 312 data. Because these data are primarily used at the local level, only a few states have created section 312 databases. In addition, in many states facilities are not required to file chemical-specific information under section 312. Even if every state had a section 312 database, it would not be possible to identify facilities potentially covered by this proposed rule with the section 312 data. Consequently, a separate registration is needed.

EPA considered requiring an earlier registration to help identify potentially affected facilities and disseminate guidance to them. An earlier registration (either 12 months or 24 months after the date of promulgation) would also help states determine the scope of their implementation programs. EPA requests comments on whether an earlier registration would be beneficial.

Implementation

EPA has two main concerns about the implementation of the registration requirement: that multiple or duplicative filings be avoided to the maximum extent possible and that the burden for processing the information be minimized. EPA requests suggestions on how the registration information might be combined with other forms facilities are required to file to limit the repetitive reporting required of facilities. For example, EPA is considering using the EPCRA section 312 Tier II form as a substitute because the Agency believes this would facilitate integration of CAA activities with SARA Title III activities and would lessen the burden on facilities.

EPA's second concern involves the burden on the government to process the information filed. Each registration will include information that would need to be screened for accuracy. For example, the Chemical Abstract Service (CAS) number and chemical name would need to be checked to make sure that they match and are covered by the rule. SIC codes, Dun and Bradstreet numbers, and quantity range codes would need to be reviewed to ensure that the format (number of digits) and codes were acceptable (i.e., that valid codes were used). Such review could place a substantial burden on EPA and states. EPA is, therefore, considering developing software that would allow electronic filing of the information. The software would perform the quality control function automatically. CAS numbers would be checked to see if they were on the list; the chemical name could then be entered automatically. A list of known synonyms for the listed substances could be included. SIC codes could be checked to ensure that the codes entered actually exist; the format for Dun & Bradstreet numbers could also be reviewed. Messages alerting the facility that the information entered was not acceptable would be provided. Such a computerized form would lessen the time needed to process the information; it would also provide facilities with a quick check on the accuracy of their information and assure them that the data would be accurately represented in EPA's database. If facilities used such a computerized filing, however, they would still need to submit a signed certification. EPA recognizes that some facilities may not be computerized or may prefer to file a printed form. Although EPA would prefer a computerized filing, printed forms would be acceptable.

EPA requests comments on its plan to encourage computerized filings and specifically solicits suggestions on how such filings could be coordinated with other information filed on disk. For example, are there other software packages for computerized EPA filings that the RMP registration should be compatible with to facilitate data sharing and limit the amount of rekeying facilities would have to do?

G. Prohibitions

CAA section 112(r)(7)(E) states that after the effective date of the risk management program regulations it shall be unlawful for any person to operate any stationary source subject to the regulations in violation of the requirements of the regulation. Violations of the risk management program and other regulations promulgated under CAA section 112(r)(7) are subject to the same penalties as violations of National Emissions Standards for Hazardous Air Pollutants (NESHAPs) promulgated under CAA section 112(d). Persons in violation of the requirements may be subject to civil penalties of not more than $25,000 per day per violation as well as criminal penalties. Civil penalties may be assessed through court actions or through administrative orders under section 113 of CAA.

H. Timing

The proposed rule must be promulgated by November 15, 1993, and will be effective three years after the date of promulgation. EPA is setting a 120-day comment period and will hold a public hearing in Washington, DC, to solicit comments.

IV. Comparison of EPA's Proposed Rule to OSHA's Standard

A. Differences Between EPA's Proposed Rule and OSHA's Standard

The primary differences between today's proposed rule and OSHA's process safety management standard are the result of the different statutory requirements for the two rules. The CAA requires EPA to include several elements in its regulation that are not mandated for OSHA. Specifically, EPA's rule must include a hazard assessment, an emergency response program with certain elements, registration, and the submittal and auditing of the RMP. The only other element EPA is proposing that is not included in the OSHA standard is the requirement for the owner or operator of a facility to define its management system and name the person or position responsible for the program. EPA considers the management requirement critical to ensuring that the risk management program elements are integrated with each other on an ongoing basis. EPA expects that this requirement will create no additional burden for facilities because the proposed section would only require facilities to provide the name or names of people or positions responsible for implementing the program.

EPA's proposed hazard assessment includes an offsite consequence analysis and a five-year accident history, as required by the CAA. Under the OSHA standard, facilities are required to develop an onsite consequence analysis. Most of the information needed to define accidental release scenarios will be derived from the process hazard analysis, which would be the same under the two rules. The main differences under the EPA rule would be the need to use air dispersion models to analyze the distances releases might migrate and the need to document the areas potentially affected by the releases. EPA's hazard assessment also is required to include a five-year release history, which would overlap to some degree with a requirement in the OSHA's process hazard analysis.

EPA's proposed emergency response provisions respond to the language in the CAA and are somewhat different from the OSHA requirement. Under the OSHA standard, facilities must comply with one of two existing OSHA standards. Facilities that are currently in compliance with OSHA's Hazardous Waste Operations and Emergency Response standard (29 CFR 1910.120)

are likely to be in substantial compliance with EPA's proposed rule. OSHA's emergency action plan regulation (29 CFR 1910.38(a)) basically requires an evacuation plan. The CAA requires EPA's emergency response program to include "specific actions to be taken in response to an accidental release of a regulated substance so as to protect human health and the environment" (CAA section 112(r)(7)(B)(ii)). Therefore, facilities that currently have only an emergency action plan required under 29 CFR 1910.138(a) would, under EPA's proposed rule, need to develop a more extensive emergency response plan that details how the facility would respond to a release to limit offsite consequences. EPA is also proposing that facilities conduct drills and exercises to test their plans. Without such exercises, a facility will not be certain that a plan can be implemented properly during an emergency. All facilities covered by the EPA rule would need to coordinate their plans with the LEPC, which is not required by the OSHA standard. EPA considers this coordination essential to protect the public. Many facilities are already coordinating their plans with the LEPC plans and with local emergency responders. Therefore, EPA does not anticipate that this requirement will add substantially to the burden for most facilities.

The final differences between the two rules are the proposed requirements for registration, submission, and auditing of the RMP. CAA section 112(r)(7)(B)(iii) mandates these requirements. The information in the RMP would be derived from the documentation required elsewhere under the EPA proposed rule or OSHA's standard. Consequently, EPA expects that the RMP will not add substantially to the burden of complying with the rules.

See Section X of this Preamble for a discussion of the incremental burden imposed by the EPA rule over the OSHA rule.

B. Section by Section Comparison of the EPA Prevention Program and the OSHA Standard

Except for the management system requirement discussed above, the proposed EPA prevention program covers the same elements as OSHA's process safety management standard and generally uses identical language except where the statutory mandates of the two agencies dictate differences. EPA has added introductory paragraphs to most sections to provide further information to the regulated community; these paragraphs impose no additional requirements and are intended to clarify the purpose of the section's requirements and the level of detail expected of different types of facilities. In addition, EPA has made editorial changes in the OSHA language to make the rule consistent with the CAA's statutory language. Specifically, where OSHA uses the word "employer," EPA would use "owner or operator," which is defined in the CAA. Where OSHA uses "highly hazardous chemicals," EPA would use "regulated substance." Where OSHA uses "facility," EPA would use "stationary source." Where OSHA uses "standard," EPA would use "rule." Finally, where OSHA references workplace impacts, EPA would reference offsite consequences, reflecting the different statutory mandates of the two agencies.

The specific parallel elements of the two rules are as follows:

- EPA's process hazard analysis requirement (§ 68.24) is the same as OSHA's process hazard analysis requirements (29 CFR 1910.119(e)), with the following changes: (1) An introductory paragraph; (2) the priority order for conducting the analysis would consider offsite consequences rather than the number of potentially affected employees; (3) OSHA's schedule for implementation would not be included because the CAA requires that facilities comply with EPA's rule within three years of the date of promulgation and, therefore, OSHA's five-year schedule could not be used; (4) the identification of previous incidents would be limited to those with offsite consequences rather than those with catastrophic consequences in the workplace; and (5) the qualitative evaluation of safety and health impacts would focus on impacts on public health and the environment rather than on employees. EPA expects that, in most cases, fewer incidents will need to be considered under EPA's proposed rule because releases are generally more likely to affect workers rather than the public. However, some types of releases, such as the release at Bhopal, have their primary impact off site. EPA's rule would ensure that these potential releases are evaluated. Finally, in response to the statutory requirement that the prevention program include monitoring, EPA would add a paragraph (j) requiring facilities to evaluate monitors, detectors, containment or control devices, and mitigation systems.
- EPA's proposed process safety information (§ 68.26) is identical to OSHA's process safety information system (29 CFR 1910.119(d)) except for editorial changes and the requirement, in paragraph (c)(5), that the evaluation of the consequences of process deviations include those affecting public health and the environment rather than workers.
- EPA's standard operating procedures requirement (§ 68.28) is identical to OSHA's operating procedures (29 CFR 1910.119(f)) except for the introductory paragraph and editorial changes.
- EPA's training section (§ 68.30) is identical to OSHA's training section (29 CFR 1910.119(g)), except for the introductory paragraph, editorial changes, and a requirement that facilities evaluate the effectiveness of their training programs and revise the programs, if necessary, based on the evaluation.
- EPA's maintenance requirements (§ 68.32) uses the same language as OSHA's mechanical integrity paragraph (29 CFR 1910.119(j)) with certain exceptions. EPA would use the term "maintenance" rather than "mechanical integrity" to parallel its statutory language. EPA would add an introductory paragraph and make editorial changes. In paragraph 68.32(b), EPA would require the facility to develop a list of equipment that requires maintenance; the OSHA standard provides a list of equipment. EPA's paragraph (b) includes the OSHA list, but EPA is concerned that for some facilities the list may be too extensive and for others it may not be comprehensive. For example, for warehouses, the only equipment that may need maintenance may be the sprinkler system and the forklifts, neither of which are on the list. EPA believes the responsibility should be on the facility to develop a list, based on specific facility concerns. EPA would also add an opening paragraph to the OSHA paragraph on inspections and testing and include the word "maintenance" before inspection and testing throughout the paragraph. The inclusion of the word "maintenance" would clarify that equipment should be maintained on a regular basis; for some equipment simple routine maintenance, such as cleaning and oiling, may be all that is necessary; other equipment, such as seals, may be replaced on a regular schedule. EPA's revision would clarify that such maintenance is included in the inspection and testing requirement. EPA would also add language to clarify that training of maintenance workers would be documented in the same manner as other training.
- EPA's pre-startup review requirement (§ 68.34) is identical to OSHA's pre-startup review paragraph (29 CFR 1910.199(i)) except for editorial changes, the introductory paragraph, and the requirement in paragraph

68.34(c)(4) that maintenance as well as operating employees are trained prior to startup and that all employees are trained on any new emergency response procedures. EPA believes these additions are necessary to ensure the safety of the facility.

- EPA's management of change requirements (§ 68.36) are identical to OSHA's paragraph (29 CFR 1910.119(l)), except for the introductory paragraph, editorial changes, and a new paragraph (b) in which EPA defines alterations that do not constitute a change. Paragraph 68.36(b) is intended to clarify what constitutes a replacement in kind. EPA would also change paragraph (d)(2) to replace OSHA's "impact of change on health and safety" to "impact of change on likelihood of a significant accidental release."
- EPA's safety audit requirement (§ 68.38) is identical to OSHA's compliance audit paragraph (29 CFR 1910.119(o)), except for the introductory paragraph and editorial changes.
- EPA's accident investigation requirements (§ 68.40) are identical to OSHA's incident investigation paragraph (29 CFR 1910.119(m)), except for: (1) The introductory paragraph and editorial changes to substitute the phrase "significant accidental release" for the word "incident"; (2) the addition, in paragraph (b), of a requirement that the procedures be written; (3) the requirement in paragraph (c) that incidents that require investigation are those that caused or could have caused offsite consequences rather than catastrophic releases in the work place; and (4) the addition, in paragraph (f)(4), that the facility identify root causes as well as initiating events.

The OSHA standard includes several requirements that are not covered by EPA's proposed rule—worker consultation, hot work permits, contractor rules, and trade secrets. EPA believes that worker consultation and hot work permits are worker protection issues and are, therefore, properly in OSHA's area of concern. EPA's trade secret rules for the CAA already are covered in 40 CFR part 2.

Finally, although EPA recognizes the importance of contractor competence on safety, EPA believes this issue is primarily one that OSHA should address, as it has in its section on contractors. In addition, EPA believes that contractors are mainly an issue at larger companies, most of which are covered by the OSHA standard. EPA requests comments on whether EPA should adopt OSHA's contractor paragraph as part of the risk management program requirements.

As specified in CAA section 112(r)(7)(B)(i), EPA's rule would become effective three years after the date of promulgation. OSHA's rule will allow facilities up to five years to conduct process hazard analyses. Because the OSHA standard was promulgated prior to EPA's rule, however, EPA does not anticipate that the actual compliance dates for the two rules will differ significantly.

V. Relationship to Other Federal and State Requirements

Federal Regulations

A number of the facilities potentially affected by today's proposed rule are also covered by other Federal requirements that may relate to practices that will be included in the risk management program. As discussed in the section on emergency response, several EPA programs require facilities to develop emergency response plans. These programs include the Resource Conservation and Recovery Act requirements and the Spill Prevention, Control, and Countermeasure requirements under the Clean Water Act. In addition, loading and unloading of hazardous materials for transportation are covered by DOT regulations, as are storage incident to transportation and repackaging for resale and transportation. The DOT regulations are particularly likely to affect distributors and warehouses. EPA requests comments on how these requirements can be harmonized to eliminate conflicts and minimize duplication. Specifically, EPA requests comments on whether compliance with other Federal regulations will meet some or all of the requirements of the proposed rule and, if so, how the rule should acknowledge this fact to ensure that facilities understand what, if any, additional steps they must take to come into compliance with the risk management program requirements.

State Laws

Four states—California, New Jersey, Delaware, and Nevada—have implemented state laws that require certain facilities to develop risk management programs. Although the existing state programs differ in some respects, they address the same basic elements that EPA is proposing in this rulemaking, except that the California program does not specify a management of change procedure. The New Jersey Toxic Catastrophe Prevention Act (TCPA) program is the most detailed program, specifying to a considerable degree the information required to be developed and submitted; New Jersey also requires that workers pass competency tests after training. The Delaware program provides facilities with more flexibility by specifying less detailed requirements. The California program is the most general of the programs; the California risk management plan program developed by each affected facility is driven by the results of the process hazard analysis, rather than responding to a set of specific mandated requirements.

The primary differences in the state programs relate to their implementation and the chemicals covered. New Jersey, Delaware, and Nevada have implemented their programs at the state level. California has delegated implementation authority to more than 100 administering agencies, which are usually the fire or health departments. New Jersey, California, and Nevada require facilities to submit their plans to the administering agencies for review and approval. Delaware requires facilities to maintain the plan and documentation on site for state inspectors. California also allows the administering agencies to exempt facilities that meet the thresholds if the agency determines that the facility does not pose a significant risk to the community.

Each of the states has a different list of chemicals and thresholds. New Jersey's list covers 109 acutely toxic substances; Delaware covers 90 toxic substances, as well as flammables and explosives; California covers all 360 of the EPCRA section 302 list of extremely hazardous substances; Nevada adopted OSHA's list of highly hazardous chemicals. California uses EPA's threshold planning quantities (TPQs) as thresholds for notification and allows local agencies to decide whether a facility must comply; New Jersey and Delaware developed separate and different methodologies for calculating thresholds; Nevada adopted OSHA's thresholds. None of the state lists is entirely consistent with EPA's proposed list.

EPA anticipates that facilities currently in compliance with the New Jersey, Delaware, and Nevada regulations will be in compliance with most elements of today's proposed rule. Because the California rules are more general and because different administering agencies have interpreted the requirements differently, it is not possible to determine, except on a case-by-case basis, to what extent a California facility will be in compliance with EPA's rule.

The Clean Air Act section 112(l) allows EPA to delegate the implementation of the risk management

program to states that have an approved program. The criteria for state programs are listed in CAA section 112(l)(5). The Act allows states to adopt the Federal program or implement a program that is more stringent. Consequently, the existing state programs will require some revisions to meet EPA's requirements or set more stringent requirements than those established by the EPA rule. EPA expects that most of the needed changes will involve the listing of chemicals and adjusting of thresholds. Other states that are developing state programs to implement these regulations should determine whether they have sufficient statutory authority under their air or emergency planning/community right-to-know SARA Title III programs to adopt the requirements of these regulations. EPA will provide additional guidance for states before the final rule is promulgated.

VI. Other Approaches Considered

The CAA requires facilities that have a regulated substance in quantities greater than the threshold to develop and submit RMPs. EPA recognizes that, for small facilities, even the less complex risk management program that would be needed for simple processes could create a substantial burden. EPA considered three approaches, therefore, that might reduce this burden. Each of these approaches would create two tiers of risk management programs, a minimal program and an expanded risk management program. The approaches differ on how facilities would be divided between the two tiers.

The first approach considered would be to develop criteria for determining when facilities needed an expanded risk management program. The criteria could be as simple as a multiple of threshold quantity (e.g., an expanded risk management program would be required at 10 times the threshold quantity), or would combine the quantity on site with other factors such as distance to the fenceline, proximity of sensitive populations (e.g., hospitals, schools, residences), similar to the approach used in Delaware. EPA decided not to propose this approach for several reasons. Facility operators in Delaware and state officials report that this approach is difficult to implement because considerable technical expertise is needed and many smaller facilities and non-manufacturers do not have the expertise in house. In addition, developing a set of criteria that would be appropriate in all situations may not be possible because too many factors influence the hazard posed by a particular process and substance. Using the simple multiple of the threshold quantity would ignore the dangers posed by relatively small quantities of regulated substances in specific circumstances.

The second approach considered would be to have facilities determine whether they needed an expanded risk management program based on the offsite consequence analysis: If the worst-case release could not expose the public or the environment to significant risks, the facility would not need an expanded risk management program. Although this approach is a better way to determine whether the potential risks of a facility merit an expanded risk management program, it is fraught with problems. This approach would create considerable potential for debate and legal disputes over the assumptions facilities use to determine offsite consequences. Assumptions appropriate for one facility or area may not be appropriate for others. EPA believes that this approach would leave facilities uncertain of the legal status of their decisions and create difficulties for enforcement by governments and citizens. In addition, given the experience of Delaware facilities, it is likely that many smaller facilities and those outside the manufacturing sector would have substantial difficulty understanding and implementing this approach. EPA notes that most of the facilities potentially affected by the proposed rule are non-manufacturers; less than five percent of the potentially affected facilities are chemical manufacturers or petroleum refineries.

The final approach considered would be to follow the California model and let local or state agencies decide which facilities pose the greatest threat and, therefore, require an expanded risk management program. EPA believes that local agencies are in the best position to identify and evaluate local hazards. However, the viability of this approach rests on the ability and willingness of state or local groups to make these decisions. This approach would impose a considerable burden on state and local authorities. It could also lead to the uneven imposition of requirements on facilities if states or localities chose to cover facilities differently. Some facilities already covered by risk management program rules believe that they have been placed at a substantial competitive disadvantage because they are complying with the state law, while similar facilities in other states are not. An uneven implementation also leaves the protection of the public uneven.

EPA requests comments on these approaches and methods that could be used to create tiers in risk management program requirements. EPA also requests comments on what a "minimal-program" would be, given the Congressional mandate that requires the risk management program to include a hazard assessment, a prevention program that includes safety procedures, maintenance, monitoring, and training, and an emergency response plan.

VII. Guidance

The CAA requires EPA to publish, when the final rule is promulgated, guidelines to assist facilities in the preparation of risk management programs. The guidelines shall, to the extent possible, include model RMPs. EPA is aware that for many facilities, especially those outside the chemical and petroleum refining industry and many smaller facilities, the risk management program approach and some of the elements will be unfamiliar. EPA intends, therefore, to provide as much guidance as possible and to encourage trade associations, professional organizations, labor, and others to develop and disseminate appropriate guidance as well. EPA requests comments on areas where guidance is needed (e.g., process hazard analyses, maintenance programs), the levels at which guidance should be directed, and appropriate formats for the guidance.

EPA has identified industry sectors that may be candidates for model risk management programs. Generally, most of the covered facilities in these sectors are using the same chemical in the same way, with similar types of equipment. The similarity will allow EPA to develop guidance on the chemical and process hazards, identify typical hazards that need to be considered in the process hazard analysis, suggest areas that should be covered in SOPs and training, identify critical equipment for maintenance programs, and describe model emergency response procedures. The purpose of the guidance will not be to provide facilities with an "off-the-shelf" plan, but rather to provide a framework that the facility can use to analyze its own operations and develop a program to manage risks.

Industry sectors that may be appropriate for model risk management programs include chlorine and ammonia users such as public drinking water systems and wastewater treatment works, cold storage facilities, wholesalers, and propane retailers. EPA requests suggestions for other industry groups for which model risk management programs may be possible.

VIII. Information Gathering Efforts

Before EPA began writing its proposed rule on risk management programs, the Agency decided to seek information from those already implementing risk management program regulations. EPA staff met extensively with officials in the three states and held interviews with seven facilities that have developed risk management programs under state laws. To gather more information, EPA held eight focus groups, five with facilities (two each in New Jersey and California, one in Delaware), and three with administering agency officials in California, to elicit their opinions of the risk management program regulations in their respective states and their ideas about what EPA should consider as it develops its program. After analyzing the results of these meetings, EPA and the National Governors' Association sponsored a two-day seminar on issues that have arisen at the state level. Officials from California, Delaware, and New Jersey, as well as New York, Minnesota, and Wisconsin attended the meetings. On the second day, other groups including trade associations, professional organizations, labor, and environmentalists joined the discussion.

Several industry participants believed that the risk management program process is improving safety, although the initial costs are high. Many considered the most costly element, the process hazard analysis, the most important because it identifies hazards and allows facilities to set priorities. Larger facilities, especially those in the chemical and petroleum industries, currently have more risk management program elements in place than do smaller facilities. Larger facilities are also more able to implement the program with their own staff; smaller facilities often lack the in-house expertise to develop and implement all risk management program elements. Various industry participants recommended that the risk management program regulations give facilities the flexibility to tailor a program to their own situations. According to these participants, the regulations should tell a facility what to do, not how to do it. Many participants with various perspectives recommended that regulations be specific enough to limit inconsistent interpretation either across states or among inspectors. Inconsistently applied regulations create competitive disadvantages and undermine the willingness of facilities to comply. Many participants from various sectors expressed the view that guidance and technical assistance will be needed at the state, local, and facility levels, and that education and outreach efforts will be necessary. Several industrial and governmental participants said that to the extent possible, the OSHA, EPA, and state regulations and chemical lists should be consistent. The same participants believed that facilities would like to ensure that if they are in compliance with one rule, they would automatically be in compliance with all rules, at least for a specific chemical. There was a general concern that the expertise to implement the program may not be uniformly available in the short-term. This lack of expertise will affect both facilities and government agencies.

A report on this information gathering effort entitled *Clean Air Act of 1990, Chemical Accident Release Provisions, Report on Focus Groups and Round Table Discussions* is available in the docket as are transcripts of the eight focus groups.

IX. Section by Section Discussion of the Proposed Rule

EPA is proposing to add a new part 68 to 40 CFR, which would include the risk management program requirements, as well as the list of regulated substances and related regulations, and any additional chemical accident prevention regulations that EPA may promulgate in the future. This section reviews the regulations that would be added in this rulemaking.

Proposed § 68.1 would define the scope of the part.

Proposed § 68.3 would provide definitions applicable to the Part.

Proposed § 68.10 would define the applicability of the risk management plan requirements to all stationary sources where a regulated substance is present in a process at any one time in more than the threshold quantity. The section also includes the effective dates for the risk management program elements. Facilities would be required to develop and implement all risk management program elements within three years of the date of promulgation of the rule or within three years of becoming subject to the rule (i.e., three years after the facility introduces a new regulated substance to its operations or a new substance is listed).

Proposed § 68.12 would define the requirements for registration. Facilities would be required to register three years after the date of promulgation of the rule or within three years of date on which the facility becomes subject to the rule (either because the facility introduces a new regulated substance to its operations or a new substance is listed). If the information submitted on a registration form is no longer accurate, facilities would be required to update the information within 60 days of the change.

Proposed § 68.15 would provide the requirements for the hazard assessment. Facilities would be required to complete a hazard assessment for each regulated substance present in greater than a threshold quantity. For each such substance, a worst-case release scenario would have to be defined. The offsite consequences of a range of release scenarios, including the worst-case and other more likely significant accidental release scenarios, would have to be analyzed. The proposed section specifies a number of scenarios that should be considered and the information that must be included in the offsite consequence analyses. The section also would require the facility to develop and maintain a five-year history of significant accidental releases and releases with the potential for offsite consequences for each regulated substance. The hazard assessment would have to be reviewed and updated every five years, unless changes necessitated an update sooner. The section would detail the documentation that would be required to be maintained on site.

Proposed § 68.20 would explain the purpose of the prevention program and specify that the ten elements of the program must be tailored to suit the degree of hazard present at a facility and the degree of complexity of the operations.

Proposed § 68.22 would require facilities to designate a person or position responsible for overseeing the development and implementation of the prevention program elements. Where other individuals are responsible for separate elements, an organization chart showing lines of authority would be required.

Proposed § 68.24 would detail the requirements for the process hazard analysis. A process hazard analysis would be required for each location where regulated substances are present above the threshold quantity. Formal process hazard analysis techniques would have to be applied, with the complexity of the process and potential consequences of a release to be considered in selecting an appropriate technique. The section would require facilities to conduct evaluations on the most hazardous locations first.

The process hazard analysis team would be required to report findings and recommendations to management. The facility management would be required to document its response to each finding and recommendation, and

maintain a schedule for implementing actions to address findings. If the facility management decides not to implement certain recommendations, a rationale for the decision would have to be documented.

Based on the process hazard analysis results, the facility would be required to evaluate and develop a plan for (or a rationale for not) installing detection and alarm systems, secondary containment and control systems, and mitigation systems. The process hazard analysis would have to be reviewed and updated every five years unless changes of chemical use, process technology, or equipment require an earlier review and revision.

Proposed § 68.26 would require the facility to develop and maintain up-to-date chemical, technology, and equipment information. Technology information would include process flow diagrams and process chemistry information, maximum intended inventories for vessels, process parameters, and consequences of deviations from parameters. Equipment information would include materials of construction, electrical classifications, material and energy balances, design bases and codes, safety equipment designs, and diagrams of piping, equipment, and controls. The owner or operator would have to document that equipment complies with good engineering practices.

Proposed § 68.28 would require facilities to develop and maintain written procedures for operations.

Proposed § 68.30 would require facilities to develop and implement training programs to ensure that all employees are trained in SOPs that apply to them. Refresher training would be required at least every three years. The facility would have to develop a method of ensuring that each employee is competent. In addition, facilities would be required to evaluate the effectiveness of their training. Based on this evaluation, the facility would be required to develop and maintain a schedule for revising the training program. All training conducted at the facility would be documented. In lieu of initial training, the facility could certify that current employees have the knowledge and skills to carry out the SOPs.

Proposed § 68.32 would require facilities to develop a list of equipment and controls whose failure could lead to a significant accidental release of a regulated substance. For items on the list, a maintenance program that included a schedule for inspections, testing, and maintenance would be required. Inspection and testing procedures and schedules would be based on manufacturers' recommendations unless industry or facility experience indicated that more frequent inspections and tests, or different procedures were needed. Written maintenance procedures and training of maintenance workers would also be required. Equipment found to be outside acceptable limits would have to be replaced or repaired prior to being used again or in a timely manner that ensures safety. Procedures to ensure that replacement equipment is installed properly and consistent with design specifications would be required. Records of each inspection, test, repair, and replacement would be required.

Proposed § 68.34 would require facilities to develop procedures to ensure that a pre-startup review is conducted before a new or modified process is brought online. This section would not apply to routine startups after shutdowns for maintenance provided standard procedures are developed for such startups. The pre-startup review would confirm that all installations and changes meet design specifications, that SOPs and maintenance programs are in place for the new processes, and that employees have been trained. Records of each startup, including actions taken to address any problems uncovered during the review, would be maintained at the facility under § 68.55.

Proposed § 68.36 would require facilities to develop management of change procedures to ensure that any alteration of chemicals, processes, and procedures are reviewed prior to implementation. Replacement of equipment or controls with a device that meets the design specifications of the replaced device would not be considered a change. The procedures would ensure that the technical basis of the change is documented and that the consequences of the change are evaluated. Process safety information and the process hazard analysis would be updated as needed, as would SOPs, training, and maintenance programs. The results of each such review would be maintained at the facility under § 68.55.

Proposed § 68.38 would require facilities to conduct safety audits every three years. Each audit would be documented in a report with findings and recommendations. Management's response to each finding and recommendation would be documented, with a schedule for implementation or a rationale for not implementing.

Proposed § 68.40 would require facilities to develop and implement procedures to investigate each significant accidental release. Investigations would have to start within 48 hours of the accident. The investigation would document, in a report to management, the initiating event, root causes, and recommendations for preventing recurrences. Management would be required to document its response to each recommendation, with either a schedule for implementation or a rationale for not implementing the recommendation. The results of the investigation would have to be reviewed with all potentially affected employees.

Proposed § 68.45 would require facilities to develop a written emergency response plan that would specify procedures for employees not involved in a response action, procedures for responders, a list of all response and mitigation technologies. The plan would also include procedures for notifying and alerting the public and public response agencies. The facility would be required to have procedures for the use, inspection, testing, and maintenance of response equipment. The facility would also develop information on first aid and emergency health care related to potential exposures. Employees would be trained in applicable response procedures. Facilities would be required to conduct drills or exercises to test the plan. Any drill or exercise would be documented, with findings relevant to plan revisions; management would be required to document responses to the findings, with schedules for implementation. The emergency response plan would be coordinated with the local emergency planning committee's community plan prepared under SARA Title III.

Proposed § 68.50 would require submission of the RMP containing a copy of the facility's registration form, hazard assessments for each regulated substance (i.e., worst-case scenario, offsite consequences for a range of more likely significant accidental release scenarios, and five-year history of significant accidental releases), a list of major hazards identified through the process hazard analysis, the consequences of failure to control each major hazard, steps being taken to address the hazards, implementation schedules, a summary of other prevention elements, a description of the emergency response plan, a description of the management system for implementing and integrating the risk management program, and a certification of accuracy and completeness. The RMP would be revised and resubmitted every five years unless changes dictate a more frequent revision.

Proposed § 68.55 would specify which records would need to be maintained and that records would be maintained for five years. Facilities would also be required to maintain implementation schedules for recommendations from the process hazard analysis, safety audit, and accident investigation.

Proposed § 68.60 would specify the audit system for reviewing RMPs.

X. Regulatory Costs and Benefits

Agencies proposing and promulgating regulations must consider both the costs and benefits of those rules on the affected community. This section summarizes the analyses conducted in support of this proposed rule and the list and threshold rule. The full regulatory impact analysis (RIA), entitled "Regulatory Impact Analysis in Support of Listing Regulated Substances and Thresholds and Mandating Risk Management Programs for Chemical Accident Release Prevention, as Required by Section 112(r) of the Clean Air Act," is available in the docket.

As mentioned above, the cost information in this section is based on an analysis of this proposed rule and the list and threshold rule. Since the RIA was completed, the Agency has collected new cost information from comments to the proposed list and threshold rule and has conducted additional analyses. The revised cost information is contained in an addendum to the RIA, which is available in the docket. The Agency recognizes that the costs/benefits and the universe of affected facilities are difficult to estimate accurately and requests comments and input on the RIA and the addendum. Specifically, EPA requests comments on the unit-cost estimates for the prevention program elements and rate of current compliance with these elements.

Options Considered

To evaluate alternatives, EPA analyzed five list and threshold options and two risk management program options. The five list options were: List 1—101 acute toxics at the proposed thresholds; List 2—EPA's proposed list (100 toxics, 62 flammables, and high explosives) at the proposed thresholds; List 3—EPA's proposed list at the EPCRA section 302 threshold planning quantities (TPQs) where applicable; List 4—the full EPCRA section 302 list at the TPQs; and List 5—the full EPCRA section 302 list of extremely hazardous substances at the threshold planning quantities, plus 62 flammables and high explosives. The options were selected to bound the different combinations of chemicals and threshold quantities that were under consideration by EPA during development of the proposed list regulation. The OSHA list was not included as a listing option because it includes some substances that EPA is statutorily prohibited from listing, it does not include many acutely toxic chemicals that meet EPA's criteria for listing, nor does it include all statutorily mandated regulated substances. In addition, many of the substances listed by OSHA are reactives, which EPA has not determined pose a significant hazard to the public in the event of an accidental release.

The RIA also considered two options for risk management program requirements: EPA's proposed rule; and a more stringent version of the proposed rule, modeled on the New Jersey state regulations, which are more detailed and impose more specific requirements for many of the risk management program elements. The OSHA standard was not considered because it does not fully meet the statutory mandate for EPA's risk management regulation.

Methodology

To estimate the universe of potentially affected facilities under each list and threshold option, EPA used 1988 data from the New Jersey Right-to-Know database. Under the New Jersey Right-to-Know statute (New Jersey Pub. L. 1983, Chapter 315), facilities are required to complete surveys of chemical inventories if they have any amount of the listed substances on site. Facilities are required to report the maximum quantity on site for each covered substance and the CAS number for the substance; all of the toxic substances EPA considered for listing are on the New Jersey list. Facilities also are required to report applicable four-digit SIC codes and the number of facility employees. Although there are limitations and cautions that must be exercised when extrapolating state data to estimate national impacts, EPA believes that the New Jersey data provide comprehensive coverage of SIC codes, including the majority of four-digit SIC codes across both the manufacturing and non-manufacturing sectors, and are reasonably representative of chemical use patterns throughout the nation. In addition, New Jersey facilities are required to report on inventories of all acutely toxic chemicals covered by EPA's listing options. Further, the information in the New Jersey database on number of employees allows disaggregation of the data by facility size. There are, however, limitations to the New Jersey data; to the extent possible, EPA augmented the New Jersey data to adjust for these limitations. For example, because facilities in New Jersey are not required to report on flammables, data from Louisiana's EPCRA section 312 database were used to develop estimates of the number of additional facilities that would be covered because of the listed flammables. Similarly, certain industrial sectors were clearly underrepresented in the New Jersey data; adjustments were made wherever possible to correct for these limitations.

The New Jersey database was searched by four-digit SIC code to identify for each such code the number of facilities that reported a listed toxic chemical above the threshold. The number of reports of regulated substances per four-digit SIC code was also obtained from the New Jersey data. The information obtained from these searches was compared with the number of facilities in each four-digit SIC code in New Jersey (based on 1988 County Business Pattern data). The ratio of the number of facilities reporting the presence of the chemicals above the proposed thresholds to the number of facilities in the SIC code in the state was extrapolated to the nation to estimate the number of facilities in each SIC code potentially affected by the proposed rule. The ratio of the number of regulated substances reported per facility in New Jersey in each four-digit SIC code was used to estimate the number of hazard assessments that would likely be required under each listing option. The Louisiana data were used to identify those four-digit SIC codes where the addition of flammables would result in additional facilities and additional chemicals per facility covered by EPA's regulatory options.

Three industry sectors were substantially underrepresented in the state databases: public facilities, cold storage facilities, and propane retailers. To adjust for this underrepresentation of public facilities, the analysis used EPA data on public drinking water systems and publicly owned treatment works to estimate the number of public facilities potentially affected by the proposed rule. Industry information was used to estimate the number of cold storage facilities (i.e., food processors, food distributors, and refrigerated warehouses) and the number of propane retailers.

In Delaware and New Jersey, 30 percent and 52 percent of the facilities (respectively) that initially registered under the state laws lowered inventories or switched chemicals to avoid having to comply with the risk management program requirements. Based on this experience, EPA assumed that 30

percent of the facilities in most manufacturing, utility, and service industries would take similar steps to avoid being affected by EPA's proposed rule. The final estimates of the number of affected facilities in these sectors were adjusted to account for this expected change in chemical use. The number of chemical manufacturers, wholesalers, and propane distributors was not adjusted downward; facilities in these sectors were assumed to be unable to reduce inventories sufficiently to avoid coverage because of the nature of their businesses.

To develop cost estimates, affected manufacturing facilities (SIC codes 20–39) were classified as small, medium, and large, based on the number of employees. For each SIC code, manufacturing facilities were also categorized as likely to have simple, moderately complex, and complex processes, based on categories developed by OSHA for its process safety management standard. Facilities outside the manufacturing sector were divided into six categories: public drinking water and treatment works; private utilities (SIC code 49—electric and gas utilities); cold storage facilities that use ammonia as a refrigerant (SIC codes 20, 4222, 514); wholesalers (SIC codes 50–51); retailers, which are primarily propane distributors; and others (primarily service industries (SIC codes 70–89)). Non-manufacturers were assumed to handle the regulated substances in simple ways and to have available EPA model risk management programs or guidance, described in Section VII of this preamble, that would lessen the burden of compliance. Wholesalers and cold storage facilities were divided into small and large facilities based on the quantity of chemicals on site because the complexity of implementing the rule is assumed more likely to be related to the quantity of the chemicals on site rather than the number of employees at a facility. For example, some chemical distributors have more than 100 million pounds of a substance on site, but employ fewer than 20 people, only some of whom handle the substance. Public and private utilities were assumed to be small because a limited number of employees are assumed to handle regulated substances.

Using industry experience and engineering expertise, cost estimates were developed for each risk management program element for each class and category of facility. Costs were developed on a per chemical, per process, per release, or per facility basis for each element of the program, as appropriate. Because many facilities already implement some of the risk management program requirements (e.g., training, emergency response plans), costs were adjusted to account for current compliance, based on compliance estimates for each risk management program element developed by EPA, OSHA, an American Paper Institute study of the actual level of current compliance among its members, and experts in the cold storage industry.

For final cost calculations, facilities were divided into two further groups: those covered only by the EPA rule, who would be subject to the full cost of complying with all elements of the proposed rule, and those covered by EPA and OSHA, who would incur costs only to implement the additional elements covered in EPA's proposed regulation (i.e., registration, hazard assessments, and the RMP). Different cost estimates were developed for publicly owned drinking water systems and wastewater treatment systems, depending on the states where the systems are located. For systems in states with delegated OSHA health and safety programs (i.e., state-plan states), only incremental costs associated with performing the hazard assessment and developing the RMP were attributed to the EPA proposed rule; these systems must already comply with state standards at least as stringent as the Federal OSHA standards. For systems not in state-plan states, the full cost of the proposed rule was assumed to be incurred. Table 1 presents the estimated number of facilities covered by each list option.

TABLE 1.—ESTIMATED NUMBER OF FACILITIES AFFECTED BY EPA'S LIST AND THRESHOLD OPTIONS

Options	Manufacturers not otherwise regulated	Manufacturers previously regulated [1]	Non-manufacturers not otherwise regulated	Non-manufacturers previously regulated	Total
List 1	3,975	18,960	28,650	64,060	115,645
List 2	3,975	18,960	48,650	68,840	140,425
List 3	13,640	19,940	54,560	68,840	156,980
List 4	19,530	20,470	37,830	64,060	141,890
List 5	19,530	20,470	57,830	68,840	166,670

[1] "Previously regulated" refers to facilities subject to the OSHA standard or to a state standard at least as stringent as the Federal OSHA standard.

EPA estimates that approximately 140,425 facilities would be affected by EPA's proposed rule. Of this universe, 87,800 would also be covered by the OSHA rule or an equivalent state standard; the costs estimated for these facilities reflect only the costs for registering and developing the hazard assessment and RMP. The remaining 52,625 facilities will only be covered by EPA's proposed rule; the estimated costs reflect the costs of implementing all risk management program requirements. The total universe of covered facilities includes 22,935 manufacturers (covering all manufacturing sectors except tobacco); 3,360 private utilities (electric and gas utilities, drinking water systems, and treatment works); 33,250 public drinking water and treatment works; 50,000 cold storage facilities; 9,460 wholesalers; 20,000 propane retailers, and 1,240 service industry facilities.

EPA estimates that the costs per facility will vary, for facilities covered solely by the EPA rule, from approximately $1,700 for a facility in the service industry sector, to approximately $153,000 for a large complex manufacturing facility. EPA did not estimate the cost of compliance for a highly complex facility such as a petroleum refinery because all of these facilities are covered by the OSHA standard. The most costly items in the prevention program for manufacturers include the process hazard analysis, which varies from $6,600 per process for a simple facility to $35,000 per evaluation for a complex facility; training costs, which vary from $2,400 for a small simple facility to $61,000 for a large (150-employee) complex facility; process and equipment information, which may cost a large facility $36,000

per process; and SOPs, which vary from $2,500 for a simple process to $14,000 for a complex process. Costs for non-manufacturers are estimated to be considerably lower both because their operations frequently do not involve special equipment and because model RMPs and guidance are assumed to be available to them, thus lessening the burden. The cost of conducting the hazard assessment is estimated to vary from $70 per assessment for non-manufacturers to $280 per assessment for large complex manufacturers; the number of assessments likely to be required is estimated to vary from one (for a cold storage facility with only ammonia on site) to 10 for a petrochemical facility. The cost of developing the RMP is estimated to range from $156 to more than $1,000 for a highly complex facility. Registration costs are estimated to vary between $43 and $105, depending on the number of substances on site. Table 2 presents the average cost per facility for manufacturers and non-manufacturers. EPA estimates that the initial cost of the proposed rule would be $503 million.

EPA estimated subsequent year total costs for a period of ten years. Costs vary from year to year because certain risk management program elements are not required to be updated yearly. For example, safety audits would be conducted every three years; hazard assessments and process hazard analyses would be updated every five years. Table 3 presents the estimated costs for years one through five for the five listing options.

Benefits

The proposed risk management rule is expected to generate benefits to the regulated community and to society at large. EPA has estimated a dollar value for many of these benefits; the methodology used to generate these estimates is presented in chapter 7 of the RIA.

The benefits of the proposed risk management rule were estimated using several quantitative techniques to investigate each of the different types of benefits expected to occur. First, the proposed risk management rule is expected to reduce the number of significant hazardous chemical releases occurring each year at facilities affected by the five list options. This reduction in the number of releases was estimated using Accidental Release Information Program (ARIP) data for the four-year period 1987–1990. The trend in the number of hazardous chemical releases in New Jersey, where many of the riskmanagement program elements are required to be in place already, was compared with the trend in the number of releases in the rest of the nation. The difference between the two trends, approximately 27 percent at the end of the four-year period, provided an estimate of the magnitude of the reduction in the number of hazardous chemical releases that could be expected to occur as a result of EPA's proposed risk management rule.

The proposed rule is also expected to reduce the number of incidents of environmental damage (e.g., soil contamination, vegetation damage, and property damage), human impacts (e.g., injuries, hospitalizations, and deaths), and response actions (e.g., evacuations and sheltering in place) occurring each year as a result of releases of hazardous chemicals. These reductions were estimated by using a regression analysis with ARIP data to predict the probability that each type of environmental damage, human impact, or response action would occur as a result of a hazardous chemical release, both with and without the proposed risk management program in effect. The estimated probability that each type of incident would occur was then multiplied by the estimated number of releases under each scenario (i.e., with and without the risk management program in effect) to derive an estimate of the number of incidents causing environmental damage, human impact, or response actions that would be avoided each year at facilities affected by the proposed risk management rule. The analysis indicated that the number of incidents would decline by 35 percent or more, depending on the type of incident and the List Option selected, following implementation of the proposed risk management program. For human impacts and response actions, the estimated number of incidents was multiplied by the average number of people injured, hospitalized, evacuated, or sheltered in place to derive an estimate of the number of people affected per year by incidents of each type.

TABLE 2.—ESTIMATED AVERAGE COST PER FACILITY MANUFACTURERS

	Small-sized facilities		Medium-sized facilities		Large-sized facilities			
	Simple	Moderate	Simple	Moderate	Simple	Moderate	Complex	Highly complex
Not Otherwise Regulated	$15,430	$27,760	$33,430	$81,920	$53,760	$93,750	$153,470	
Previously Regulated	760	1,070	910	1,680	1,500	1,960	3,280	$5,720

NON-MANUFACTURERS

	Public facilities	Private utilities	Cold storage facilities		Wholesalers	Service industries	Retailers
			Small	Large			
Not Otherwise Regulated	$8,200	$8,250	$9,400	.....	$2,220	$1,860	$1,670
Previously Regulated	530	580	.....	$510	650	560	.....

TABLE 3.—SUBSEQUENT-YEAR COSTS BY LIST OPTION FOR PROGRAM OPTION 1

[$ millions]

Year	List option 1	List option 2	List option 3	List option 4	List option 5
0	$460	$503	$858	$1,004	$1,046
1	79	92	144	159	171
2	84	98	152	167	181

TABLE 3.—SUBSEQUENT-YEAR COSTS BY LIST OPTION FOR PROGRAM OPTION 1—Continued

[$ millions]

Year	List option 1	List option 2	List option 3	List option 4	List option 5
3	109	126	213	241	258
4	84	98	152	167	181
5	195	217	338	383	404

Finally, the dollar value of the benefits of the proposed risk management program were estimated by developing an estimate of the cost of each type of incident, and then by multiplying the estimated cost of each type of incident by the number of incidents avoided that may be attributed to the presence of a risk management program. The benefits of the proposed rule are estimated to be approximately $890 million per year. Table 4 presents the estimated costs and benefits for each of the list options considered by EPA during the rule development.

TABLE 4.—ESTIMATED FIRST YEAR COSTS AND BENEFITS

[$ Millions]

	Estimated costs	Estimated benefits
List option 1	$460	$836
List option 2	503	890
List option 3	858	1,539
List option 4	1,004	1,615
List option 5	1,046	1,670

XI. Required Analyses

A. Executive Order 12291

Under Executive Order 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement for a Regulatory Impact Analysis. Under E.O. 12291, a major rule is one that is likely to result in: (1) An adverse (cost) impact in the economy of $100 million or more, (2) a major increase in cost or prices to consumers, individual industries, Federal, state, or local government, or geographic region, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises in domestic or export markets. EPA has determined that today's proposed rule is a major rule for the purposes of E.O. 12291 because the first year cost of the rule is estimated to be $503 million. An RIA entitled, "Regulatory Impact Analysis in Support of Listing Regulated Substances and Thresholds and Mandating Risk Management Programs for Chemical Accident Release Prevention, as Required by Section 112(r) of the Clean Air Act," has been prepared and is available in the docket.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, Federal agencies must evaluate the effects of the rule on small entities and examine alternatives that may reduce these effects. EPA has prepared an analysis of the effects on small entities. The analysis employed three measures for assessing the effects of the proposed rule, and the alternatives, on small business: the before-tax cost of compliance as a percentage of firm sales; the after-tax cost of compliance as a percentage of net income; and the percent change in the debt-to-asset ratio. The results indicated that for 90 percent of the small businesses affected, the economic burden for initial costs would be mild. For the remaining 10 percent, the program would impose a significant adverse effect in the first year, as measured by the ratio of after-tax compliance costs to net income. This burden is an upper-bound estimate because, in actuality, many firms are likely to finance compliance in a variety of ways, such as debt, current earnings, and increased prices, rather than finance compliance in one way. Consequently, the impact of compliance costs is likely to be less severe than estimated in the analysis. For subsequent years, the economic impact as measured by the after-tax ratio is estimated to be small for businesses. The impact on small governments also is estimated to be small based on the ratio of compliance costs to revenues. The full regulatory flexibility analysis is included, as Chapter 8, in the RIA, available in the docket.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1656.1) and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M St. SW., (PM–223Y), Washington, DC 20460, or by calling (202) 260–2740.

Public reporting burden for this collection of information, which will take place three years after the rule is final, will vary depending on the size and complexity of the facility and the number of substances affected: between 1.25 and 3 hours for the registration form, another .2 to 341.2 hours for the burden to maintain onsite documentation, and a range of between 4.25 and 31.5 hours to prepare and submit a risk management plan. These hours reflect time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, Information Policy Branch, PM–223, U.S. EPA, 401 M St. SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for EPA. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 68

Environmental protection, Accidental release prevention, Chemicals, Chemical accident prevention, Emergency response, Extremely hazardous substances, Hazardous substances, Intergovernmental relations, Process safety management, Risk management.

Dated: October 7, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, subchapter C, part 68 of the Code of Federal Regulations is proposed to be added to read as follows:

PART 68—ACCIDENTAL RELEASE PREVENTION PROVISIONS

Subpart A—General Provisions

Sec.

68.1 Scope.

Sec.
68.3 Definitions.
68.5 Threshold Determination [Reserved].

Subpart B—Risk Management Plan Requirements

68.10 Applicability.
68.12 Registration.
68.15 Hazard assessment.
68.20 Prevention program purpose.
68.22 Prevention program—management system.
68.24 Prevention program—process hazard analysis.
68.26 Prevention program—process safety information.
68.28 Prevention program—standard operating procedures.
68.30 Prevention program—training.
68.32 Prevention program—maintenance (mechanical integrity).
68.34 Prevention program—pre-startup review.
68.36 Prevention program—management of change.
68.38 Prevention program—safety audits.
68.40 Prevention program—accident investigation.
68.45 Emergency response program.
68.50 Risk management plan.
68.55 Recordkeeping requirements.
68.60 Audits.

Subpart C—List of Regulated Substances and Thresholds for Accidental Release Prevention [Reserved]

Authority: 42 U.S.C. 7412(r) and 7601(a)(1).

Subpart A—General Provisions

§68.1 Scope.

This part sets forth requirements for chemical accident prevention steps that must be taken by the owner or operator of stationary sources.

§68.3 Definitions.

As used in this part, all terms not defined shall have the meaning given to them by the Clean Air Act (42 U.S.C. 7401 *et seq.*).

Act means the Clean Air Act as amended (42 U.S.C. 7401 *et seq.*).

Administrator means the administrator of the U.S. Environmental Protection Agency.

Analysis of offsite consequences means a qualitative or quantitative analysis of a range of accidental releases, including worst-case releases, to determine offsite effects including potential exposures of affected populations.

Mitigation system means specific equipment, substances or personnel designed or deployed to mitigate an accidental release; examples of mitigation systems include water curtain sprays, foam suppression systems, and emergency response teams.

Offsite means areas beyond the property boundary of the stationary source or areas within the property boundary to which the public has routine and unrestricted access.

Owner or operator means any person who owns, leases, operates, or controls a stationary source.

RMP means the risk management plan required under § 68.50.

SIC means Standard Industrial Classification.

Significant accidental release means any accidental release of a regulated substance that has caused or has the potential to cause offsite consequences such as death, injury, or adverse effects to human health or the environment or to cause the public to shelter-in-place or be evacuated to avoid such consequences.

Worst-case release means the loss of all of the regulated substance from the process in an accidental release that leads to the worst offsite consequences.

§68.5 Threshold determination. [Reserved]

Subpart B—Risk Management Program Requirements

§68.10 Applicability.

(a) The requirements in this subpart apply to all stationary sources that, after [three years from the date of final rule publication] have a regulated substance present in a process in more than a threshold quantity as determined under § 68.5.

(b) Stationary sources covered by this subpart shall comply with §§ 68.12 through 68.60 no later than [three years after the date of final rule publication] or within three years after the date on which a regulated substance first becomes present in a process in more than a threshold quantity.

§68.12 Registration.

(a) By [three years after the publication date of the final rule], or within three years of the date on which a stationary source becomes subject to this subpart, the owner or operator of each stationary source covered by this part shall register with the Administrator.

(b) The registration shall include the following:

(1) The name of the stationary source, its street address, its mailing address, and telephone number;

(2) The names and CAS numbers of all regulated substances that are present at the stationary source in greater than the threshold quantities, and the maximum amount present in a process at any one time (in ranges);

(3) For each regulated substance, the four-digit SIC code(s) that apply to the use of the substance at the stationary source;

(4) The Dun and Bradstreet number of the stationary source;

(5) The name of a contact person; and

(6) The following certification signed by the owner or operator: "The undersigned certifies that, to the best of my knowledge, information, and belief formed after reasonable inquiry, the information submitted is true, accurate, and complete. I certify that I prepared or caused to be prepared a risk management plan that complies with 40 CFR 68.50 [and, when applicable: "and the provisions of 40 CFR 68.60"] and that I submitted or caused to be submitted copies of the risk management plan to each of the entities listed in 40 CFR 68.50(a). [Signature]."

(c) If at any time after the submission of the registration, information in the registration is no longer accurate, the owner or operator shall submit an amended notice within 60 days to the Administrator and implementing agency. After a final determination of necessary revisions under § 68.60(f), the owner or operator shall register the revised risk management plan by the date required in § 68.60(g).

§68.15 Hazard assessment.

(a) The purpose of the hazard assessment is to evaluate the impact of significant accidental releases on the public health and environment and to develop a history of such releases.

(b) Hazard assessments shall be conducted for each regulated substance present at the stationary source above the threshold quantity. For each regulated substance, the hazard assessment shall include the following steps:

(1) Determine a worst-case release scenario for the regulated substance at the stationary source;

(2) Identify other more likely significant accidental releases for each process where the regulated substance is present above the threshold quantity, including processes where the substance is manufactured, processed, or used, and where the regulated substance is stored, loaded, or unloaded;

(3) Analyze the offsite consequences of the worst-case release scenario and the other more likely significant accidental release scenarios identified in § 68.15(b)(2); and

(4) Develop a history of accidental releases of the regulated substance.

(c) To determine a worst-case release scenario, the owner or operator shall examine each process handling each regulated substance and assume that all of the regulated substance in the process

is instantaneously released and all mitigation systems fail to minimize the consequences of the release.

(d) The owner or operator shall determine other more likely significant accidental releases such as but not limited to:

(1) Transfer hose failure, excess flow valve or emergency shutoff failure and subsequent loss of piping and shipping container contents (truck or rail);

(2) Process piping failure and loss of contents from both directions from the break; and

(3) Reactor or other process vessel failure where the contents are at temperatures and pressures above ambient conditions. In these situations, passive mitigation systems are assumed to work to minimize the consequences of the release.

(e) For each regulated substance, the offsite consequences of the worst case or more likely significant accidental release scenarios shall be analyzed as follows:

(1) The rate and quantity of substance lost to the air and the duration of the event;

(2) The distance, in all directions, at which exposure to the substance or damage to offsite property or the environment from the release could occur using both worst-case meteorological conditions (i.e., F stability and 1.5 m/sec wind speed) and meteorological conditions most often occurring at the stationary source;

(3) Populations within these distances that could be exposed to the vapor cloud, pressure wave, or debris, depending on wind direction and meteorological conditions; and

(4) Environmental damage that could be expected within these distances, including consideration of sensitive ecosystems, migration routes, vulnerable natural areas, and critical habitats for threatened or endangered species.

(f) The owner or operator shall prepare a five-year history of significant accidental releases and releases with potential for offsite consequences for each regulated substance handled at the stationary source. The history shall list the release date, time, substance and quantity released, the duration of the release, the concentration of the substance released, and any offsite consequences such as deaths, injuries, hospitalizations, medical treatments, evacuations, sheltering in-place, and major off-site environmental impacts such as soil, groundwater, or drinking water contamination, fish kills, and vegetation damage.

(g) The hazard assessment shall be reviewed and updated at least once every five years. If changes in process, management, or any other relevant aspect of the stationary source or its surroundings (e.g. new housing developments or improved emergency response services) might reasonably be expected to make the results of the hazard assessment inaccurate (i.e., if either the worst-case release scenario or the estimate of offsite effects might reasonably be expected to change), the owner or operator shall complete a new or revised hazard assessment within 60 days of such change.

(h) The owner or operator shall maintain the following records documenting the hazard assessment and analysis of offsite consequences:

(1) A description of the worst-case scenario;

(2) A description of the other more likely significant accidental release scenarios identified in § 68.15(b)(2), assumptions used, analyses or worksheets used to derive the accident scenarios, and the rationale for selection of specific scenarios; and

(3) Documentation for how the offsite consequences for each scenario were determined including:

(i) Estimated quantity of substance released, rate of release, and duration of the release;

(ii) Meteorological data used for typical conditions at the stationary source;

(iii) For toxic substances, the concentration used to determine the level of exposure and the data used for that concentration;

(iv) Calculations for determination of the distances downwind to the acute toxicity concentration; and

(v) Data used for estimation of the populations exposed or area damaged.

(i) A summary of the information required under paragraph (h) of this section and a table showing the data for the five-year accident history under paragraph (f) of this section shall be included in the RMP required under § 68.50.

§ 68.20 Prevention program purpose.

The owner or operator of a stationary source having one or more regulated substance above the threshold quantity shall develop and implement an integrated management system to evaluate the hazards present at the stationary source and to find the best ways to control these hazards. The prevention program includes ten required elements that must be tailored to suit the degree of hazards present at the stationary source and the degree of complexity of the stationary source's operations and that should work together under management control to ensure safe operations.

§ 68.22 Prevention program—management system.

(a) The owner or operator of the stationary source shall develop a management system to oversee the implementation of the risk management program elements. The purpose of the management system is to ensure that the elements of the risk management program are integrated and implemented on an ongoing basis and that the responsibility for the overall program and for each element is clear.

(b) As part of the management system, the owner or operator shall identify a single person or position that has the overall responsibility for the development, implementation, and integration of the risk management program requirements.

(c) When responsibility for implementing individual requirements of the risk management program is assigned to persons other than the person designated under paragraph (b) of this section, the names or positions of these people shall be documented and the lines of authority defined through an organization chart or similar document.

§ 68.24 Prevention program—process hazard analysis.

(a) The purpose of the process hazard analysis (hazard evaluation) is to examine, in a systematic, step-by-step way, the equipment, systems, and procedures for handling regulated substances and to identify the mishaps that could occur, analyze the likelihood that mishaps will occur, evaluate the consequences of these mishaps, and analyze the likelihood that safety systems, mitigation systems, and emergency alarms will function properly to eliminate or reduce the consequences of a mishap. A thorough process hazard analysis is the foundation for the remaining elements of the prevention program.

(b) The owner or operator shall perform an initial process hazard analysis on processes covered by this part. The process hazard analysis shall be appropriate to the complexity of the process and shall identify, evaluate, and control the hazards involved in the process. The owner or operator shall determine and document the priority order for conducting process hazard analyses based on a rationale which includes such considerations as the extent of process hazards, offsite consequences, age of the process, and operating history of the process. The process hazard analysis shall be

completed no later than [three years after the date of final rule publication].

(c) Process hazard analyses completed after (Insert date 5 years before the effective date of the final rule) which meet the requirements of this section are acceptable as initial process hazard analyses. These process hazard analyses shall be updated and revalidated, based on their completion date, in accordance with paragraph (h) of this section.

(d) The owner or operator shall use one or more of the following methodologies that are appropriate to determine and evaluate the hazards of the process being analyzed:

(1) What-If;

(2) Checklist;

(3) What-If/Checklist;

(4) Hazard and Operability Study (HAZOP);

(5) Failure Mode and Effects Analysis (FMEA);

(6) Fault Tree Analysis; or

(7) An appropriate equivalent methodology.

(e) The process hazard analysis shall address:

(1) The hazards of the process;

(2) The identification of any previous incident which had a likely potential for significant offsite consequences;

(3) Engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases. Acceptable detection methods might include process monitoring and control instrumentation with alarms, and detection hardware such as hydrocarbon sensors;

(4) Consequences of failure of engineering and administrative controls;

(5) Stationary source siting;

(6) Human factors; and

(7) A qualitative evaluation of a range of possible safety and health effects of failure of the controls on public health and the environment.

(f) The process hazard analysis shall be performed by a team with expertise in engineering and process operations, and the team shall include at least one employee who has experience and knowledge specific to the process being evaluated. Also, one member of the team must be knowledgeable in the specific process hazard analysis methodology being used.

(g) The owner or operator shall establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; and communicate the action to operating, maintenance, and other employees whose work assignments are in the process and who are affected by the recommendations or actions.

(h) At least every five (5) years after the completion of the initial process hazard analysis, the process hazard analysis shall be updated and revalidated by a team meeting the requirements in paragraph (f) of this section, to assure that the process hazard analysis is consistent with the current process.

(i) The owner or operator shall retain process hazard analyses and updates or revalidations for each process covered by this section, as well as the documented resolution of recommendations described in paragraph (g) of this section for the life of the process.

(j) Based on the findings and recommendations of the process hazard analysis, the owner or operator shall also investigate, evaluate, and document a plan for, or rationale for not, installing (if not already in place):

(1) Monitors, detectors, sensors, or alarms for early detection of accidental releases;

(2) Secondary containment or control devices such as, but not limited to, flares, scrubbers, quench, surge, or dump tanks, to capture releases; and

(3) Mitigation systems to reduce the downwind consequences of the release.

§ 68.26 Prevention program—process safety information.

(a) The owner or operator shall complete a compilation of written process safety information before conducting any process hazard analysis required in § 68.24. The compilation of written process safety information is to enable the owner or operator and the employees involved in operating the process to identify and understand the hazards posed by those processes involving regulated substances. This process safety information shall include information pertaining to the hazards of the regulated substances used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process.

(b) Information pertaining to hazards of the regulated substance in the process. This information shall consist of at least the following:

(1) Toxicity information;

(2) Permissible exposure limits;

(3) Physical data;

(4) Reactivity data;

(5) Corrosivity data;

(6) Thermal and chemical stability data; and

(7) Hazardous effects of inadvertent mixing of different materials that could foreseeably occur.

Note: MSDSs meeting the requirements of 29 CFR 1910.1200(g) may be used to comply with this requirement to the extent they contain the information required by this paragraph.

(c) Information pertaining to the technology of the process. Information concerning the technology of the process shall include at least the following:

(1) A block flow diagram or simplified process flow diagram;

(2) Process chemistry;

(3) Maximum intended inventory;

(4) Safe upper and lower limits for such items as temperatures, pressures, flows, or compositions; and,

(5) An evaluation of the consequences of deviations, including those affecting public health and the environment.

(d) Where the original technological information required by paragraph (c) of this section no longer exists, such information may be developed in conjunction with the process hazard analysis in sufficient detail to support the analysis.

(e) Information pertaining to the equipment in the process. Information pertaining to the equipment in the process shall include:

(1) Materials of construction;

(2) Piping and instrument diagrams (P&ID's);

(3) Electrical classification;

(4) Relief system design and design basis;

(5) Ventilation system design;

(6) Design codes and standards employed;

(7) Material and energy balances for processes built after the effective date of rule; and

(8) Safety systems (e.g., interlocks, detection, or suppression systems).

(f) The owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices.

(g) For existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use, the owner or operator shall determine and document that the equipment is designed, maintained, inspected, tested, and operating in a safe manner.

§ 68.28 Prevention program—standard operating procedures.

(a) The purpose of written standard operating procedures is to document the safe and proper way to operate and maintain processes and equipment, and to handle and store regulated substances at a stationary source. Procedures may

be based on the process hazard analysis (hazard evaluation) information, successful past operating experience, manufacturers' recommendations, and applicable and appropriate codes and standards. The owner or operator shall consider the complexity of the process or stationary source to develop standard procedures.

(b) The owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements:

(1) Steps for each operating phase:

(i) Initial startup;

(ii) Normal operations;

(iii) Temporary operations;

(iv) Emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to assure that emergency shutdown is executed in a safe and timely manner;

(v) Emergency operations;

(vi) Normal shutdown; and

(vii) Startup following a turnaround, or after an emergency shutdown.

(2) Operating limits:

(i) Consequences of deviation; and

(ii) Steps required to correct or avoid deviation.

(3) Safety and health considerations:

(i) Properties of, and hazards presented by, the substances used in the process;

(ii) Precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment;

(iii) Control measures to be taken if physical contact or airborne exposure occurs;

(iv) Quality control for raw materials and control of regulated substance inventory levels; and,

(v) Any special or unique hazards.

(4) Safety systems and their functions.

(c) Operating procedures shall be readily accessible to employees who work in or maintain a process.

(d) The operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate.

(e) The owner or operator shall develop and implement safe work practices to provide for the control of hazards during operations involving lockout/tagout; confined space entry; opening process equipment or piping; and control over entrance into a stationary source by maintenance, contractor, laboratory, or other support personnel. These safe work practices shall apply to employees and contractor employees working on a facility.

§ 68.30 Prevention program—training.

(a) The purpose of the training program is to ensure that each employee involved with regulated substances has learned and understands the procedures developed under § 68.28. The owner or operator shall consider the complexity of the procedures, and the complexity of the process or stationary sources when developing training programs.

(b) *Initial training.* (1) Each employee presently operating a process, and each employee before operating a newly assigned process shall be trained in an overview of the process and in the operating procedures as specified in § 68.28. The training shall include emphasis on the specific safety and health standards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks.

(2) In lieu of initial training for those employees already involved in operating a process on the effective date of this rule, an owner or operator may certify in writing that the employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as specified in the operating procedures.

(c) *Refresher training.* Refresher training shall be provided at least every three years and more often if necessary to each employee involved in operating a covered process to assure that the employee understands and adheres to the current operating procedures in the process. The owner or operator, in consultation with the employees involved in operating the process, shall determine the appropriate frequency of refresher training.

(d) *Training documentation.* The owner or operator shall ascertain that each employee involved in operating a process has received and understood the training required by this section. The owner or operator shall prepare a record which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training.

(e) The owner or operator shall evaluate the effectiveness of the training program. A schedule for reviewing and revising the program shall be maintained at the stationary source.

§ 68.32 Prevention program—maintenance (mechanical integrity).

(a) The purpose of the maintenance program is to determine and target the specific equipment that is identified through the process hazard analysis (hazard evaluation) or through operating experience as needing regular maintenance because failure of the equipment would lead to a significant accidental release. The owner or operator shall consider the complexity of the process or stationary source in developing the maintenance program.

(b) The owner or operator shall develop a list of equipment and controls the failure of which could result in a significant accidental release. As applicable, the equipment list shall include:

(1) Pressure vessels and storage tanks;

(2) Piping systems (including piping components such as valves);

(3) Relief and vent systems and devices;

(4) Emergency shutdown systems;

(5) Controls (including monitoring devices and sensors, alarms, and interlocks); and,

(6) Pumps.

(c) *Written procedures.* The owner or operator shall establish and implement written procedures to maintain the on-going integrity of process equipment.

(d) *Training for process maintenance activities.* The owner or operator shall train each employee involved in maintaining the on-going integrity of process equipment in an overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner and shall document the training as required in § 68.30(d).

(e) *Maintenance, inspections, and testing.* For every item of equipment required to be listed under paragraph (b) of this section, the owner or operator shall develop a maintenance program to inspect, test, and maintain the equipment on an appropriate schedule to ensure that the equipment and controls continue to function according to specifications.

(1) Maintenance, inspections, and tests shall be performed on process equipment.

(2) Maintenance, inspection, and testing procedures shall follow recognized and generally accepted good engineering practices.

(3) The frequency of maintenance, inspections, and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if

determined to be necessary by prior operating experience.

(4) The owner or operator shall document each maintenance procedure, inspection, and test that has been performed on process equipment. The documentation shall identify the date of the maintenance/inspection/test; the name of the person who performed the maintenance/inspection/test; the serial number or other identifier of the equipment on which the maintenance, inspection, or test was performed; a description of the maintenance, inspection, and test that is performed; and the results of the inspection or test.

(f) *Equipment deficiencies.* The owner or operator shall correct deficiencies in equipment that are outside acceptable limits (defined in the process safety information in § 68.26(c)(4) and (e)) before further use or in a safe and timely manner when necessary means are taken to assure safe operations.

(g) *Quality assurance.*

(1) In the construction of new plants and equipment, the owner or operator shall assure that equipment as it is fabricated is suitable for the process application for which they will be used.

(2) Appropriate checks and inspections shall be performed to assure that equipment is installed properly and consistent with design specifications and manufacturer's instructions.

(3) The owner or operator shall assure that maintenance materials, spare parts, and equipment are suitable for the process application for which they will be used.

§ 68.34 Prevention program—pre-startup review.

(a) The purpose of the pre-startup review is to ensure that new or modified equipment is ready to properly and safely contain any new or previously handled regulated substance before that substance is introduced into the system. The owner or operator shall consider the complexity of the process or stationary source in developing the pre-startup review.

(b) The owner or operator shall perform a pre-startup safety review for new stationary sources and for modified stationary sources when the modification is significant enough to require a change in the process safety information.

(c) The pre-startup safety review shall confirm that prior to the introduction of regulated substances to a process:

(1) Construction and equipment is in accordance with design specifications;

(2) Safety, operating, maintenance, and emergency procedures are in place and are adequate;

(3) For new stationary sources, a process hazard analysis has been performed and recommendations have been resolved or implemented before startup; and modified stationary sources meet the requirements contained in management of change, § 68.36; and

(4) Training of each employee involved in operating or maintaining a process has been completed and that employees are trained in any new emergency response procedures.

§ 68.36 Prevention program—management of change.

(a) The purpose of a management of change program is to ensure that any alteration of equipment, procedures, substances, or processes are thoroughly analyzed to identify hazards, the consequences of failures, and impacts of the change on existing equipment, procedures, substances, and processes prior to implementation of the change.

(b) For process equipment, devices, or controls, replacement is not a change if the design, materials of construction, and parameters for flow, pressure, and temperature satisfy the design specifications of the device replaced.

(c) The owner or operator shall establish and implement written procedures to manage changes to process chemicals, technology, equipment, and procedures; and changes to stationary sources that affect a covered process.

(d) The procedures shall assure that the following considerations are addressed prior to any change:

(1) The technical basis for the proposed change;

(2) Impact of change on likelihood of a significant accidental release;

(3) Modifications to operating procedures;

(4) Necessary time period for the change; and,

(5) Authorization requirements for the proposed change.

(e) Employees involved in operating a process and maintenance and contract employees whose job tasks will be directly affected by a change in the process shall be informed of and trained in the change prior to the startup of the process or affected part of the process.

(f) If a change covered by this section results in a change in the process safety information required by § 68.26, such information shall be updated accordingly.

(g) If a change covered by this section results in a change in the operating procedures or practices required by § 68.28, such procedures or practices shall be updated accordingly.

§ 68.38 Prevention program—safety audits.

(a) The safety audit consists of a periodic examination of the management systems and programs at the stationary source. The examination shall include a review of the documentation and implementation of the requirements of this subpart. The owner or operator shall consider the complexity of the process and of the process safety management program to develop the safety audit procedures, plans, and timing.

(b) The owners or operators shall certify that they have evaluated compliance with the provisions of this section at least every three years, to verify that the procedures and practices developed under this part are adequate and are being followed.

(c) The safety audit shall be conducted by at least one person knowledgeable in the process.

(d) A report of the findings of the audit shall be developed.

(e) The owner or operator shall promptly determine and document an appropriate response to each of the findings of the audit, and document that deficiencies have been corrected.

(f) The owner or operator shall retain the two most recent safety audit reports, as well as the documented actions in paragraph (e) of this section.

§ 68.40 Prevention program—accident investigation.

(a) The purpose of the accident investigation is to learn the underlying causes of accidents to take steps to prevent them or similar accidental releases from recurring.

(b) The owner or operator shall establish and implement written procedures to investigate each significant accidental release.

(c) The owner or operator shall investigate each significant accidental release.

(d) An accident investigation shall be initiated as promptly as possible, but not later than 48 hours following the significant accidental release.

(e) An accident investigation team shall be established and consist of at least one person knowledgeable in the process involved, including a contract employee if the incident involved work of the contractor, and other persons with appropriate knowledge and experience to thoroughly investigate and analyze the significant accidental release.

(f) A report shall be prepared at the conclusion of the investigation which includes at a minimum:

(1) Date of significant accidental release;

(2) Date investigation began;

(3) A description of the significant accidental release;

(4) The factors that contributed to the significant accidental release, including

its initiating event, and root cause or causes that may have increased the likelihood of the initiating event; and,

(5) Any recommendations resulting from the investigation.

(g) The owner or operator shall establish a system to promptly address and resolve the accident report findings and recommendations. Resolutions and corrective actions shall be documented.

(h) The report shall be reviewed with all affected personnel whose job tasks are relevant to the significant accidental release findings including contract employees where applicable.

(i) Significant accidental release investigation reports shall be retained for five years.

§ 68.45 Emergency response program.

(a) The purpose of the emergency response program is to prepare for response to and mitigation of accidental releases to limit the severity of such releases and their impact on the public health and environment.

(b) The owner or operator of a stationary source shall establish and implement an emergency response plan for responding to and mitigating accidental releases of regulated substances. The plan shall detail the steps all employees shall take in response to accidental releases and shall include:

(1) Evacuation routes or protective actions for employees not directly involved in responding to the release;

(2) Procedures for employees responding to the release, including protective equipment use;

(3) Descriptions of all response and mitigation technologies available at the stationary source; and

(4) Procedures for informing the public and emergency response agencies about releases.

(c) The owner or operator shall develop written procedures for the use of emergency response equipment and for its inspection, testing, and maintenance. The maintenance program for emergency response equipment shall be documented as required in § 68.32(e)(4).

(d) For each regulated substance, the owner or operator shall document the proper first-aid and emergency medical treatment necessary to treat accidental human exposure.

(e) The owner or operator shall train all employees in relevant emergency response procedures and document the training as required under § 68.30(d).

(f) The owner or operator shall conduct drills or exercises to test the plan and evaluate its effectiveness. Each drill or exercise shall be documented in writing and shall include findings of the drill or exercise that indicate aspects of the plan and procedures which need to be revised. Plans shall be revised based on the findings of the drills or exercises. The owner or operator shall document the response to each finding from a drill or exercise. For each finding requiring a change that is implemented, the schedule for implementing the change shall be documented.

(g) Each emergency response plan shall be coordinated with local emergency response plans developed under part 355 of this chapter by the local emergency planning committees and local emergency response agencies. Upon request of the local emergency planning committee, the owner or operator shall promptly provide information to the local emergency planning committee necessary for developing and implementing the community emergency response plan.

(h) The owner and operator shall maintain a copy of the emergency response plan, including descriptions of all mitigation systems in place, at the stationary source.

§ 68.50 Risk management plan.

(a) The owner or operator of a stationary source covered by this part shall submit a risk management plan (report) summarizing the key elements of its risk management program to the implementing agency and shall submit copies to the State Emergency Response Commission, the Local Emergency Planning Committee with jurisdiction for the area where the source is located, and the Chemical Safety and Hazard Investigation Board. Each report submitted by the stationary source shall address all regulated substances present at the stationary source in quantities above the threshold quantity.

(b) The report shall include a copy of the registration form, with updated information to ensure that the registration information is accurate.

(c) The report shall include, for each regulated substance, a summary of the hazard assessment and analysis of offsite consequences and accident history data required by § 68.15(i).

(d) The report shall include, for the stationary source, a description of the major hazards (e.g., equipment failure, human error, natural phenomena, or other factors or a combination of such factors which could lead to a significant accidental release) identified through the process hazard analyses, a description of the consequences of a failure to control for each identified major hazard, a summary of all actions taken or planned to address these hazards, and how significant accidental releases are prevented or mitigated, or the consequences reduced by these actions. The purpose of the summary is to identify major hazards and provide an overview of the prevention program being implemented by the stationary source to prevent significant accidental releases. For each action taken to address a hazard, the report shall include the date on which the action was started (or is scheduled to start) and the actual or scheduled completion date. Where the same actions (e.g., training, certain controls, preventive maintenance programs, improved emergency response plan) address a number of hazards, the description may be organized by actions rather than hazards. If any requirement for the risk management program specified in this subpart is not covered in the summary of actions taken to address hazards, the report shall include a brief description of the stationary source's implementation of the requirement.

(e) The report shall include a summary of the stationary source's emergency response plan. The summary shall include:

(1) The procedures adopted to inform emergency response authorities and the public;

(2) The name or position of the point of contact between the stationary source and the public authorities;

(3) The dates of drills and exercises completed and planned and the results of completed drills; and

(4) A description of coordination with the local emergency planning committee.

(f) The report shall include a description of the management system developed to implement and coordinate the elements of the hazard assessment, prevention program, and emergency response program at the stationary source. The description shall define the person or position at the stationary source that is responsible for the overall implementation and coordination of the risk management program requirements. Where regulated substances are present above their threshold quantities at several locations at the stationary source or where responsibility for implementing individual requirements is delegated to separate groups at the stationary source, an organization chart shall be included to describe the lines of responsibility.

(g) The report shall include a certification by the owner or operator that, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the information submitted is true, accurate, and complete.

(h) The report shall be reviewed and updated at least every five years and

resubmitted to the implementing agency and copies shall be submitted to the State Emergency Response Commission, the Local Emergency Planning Committee, and the Chemical Safety and Hazard Investigation Board. If a change such as the introduction of a new regulated substance or process occurs that requires a revised or updated hazard assessment or process hazard analysis, then the report shall be updated and resubmitted within six months of the introduction of the new process or substance.

(i) The report shall be available to the public under section 114(c) of the Clean Air Act.

§ 68.55 Recordkeeping requirements.

(a) The owner or operator of a stationary source covered by this part shall develop and maintain at the stationary source, for five years, records supporting the implementation of the risk management program and the development of the risk management plan.

(b) For the process hazard analysis, safety audit, and accident investigation, the records required to be maintained under paragraph (a) of this section shall include management's response to each recommendation that is required to be made, addressed, and documented under §§ 68.24(g), 68.38(e), 68.40(f), and 68.40(g). For implemented recommendations and recommendations to be implemented, the documentation shall include the date (or scheduled date) for starting implementation and the date (or scheduled date) for completion of the implementation. For each recommendation not implemented, the documentation shall include an explanation of the decision.

(c) For pre-startup reviews and management of change, the documentation shall include the findings of the review and any additional steps (including a description of the steps and the reasons they were implemented) that were taken prior to implementation of the startup or change.

(d) The owner or operator shall maintain copies of all standard operating, maintenance, management of change, emergency response, and accident investigation procedures required under this part.

§ 68.60 Audits.

(a) In addition to inspections for the purpose of regulatory development and enforcement of the Act, the implementing agency shall periodically audit RMPs registered under § 68.12 in order to review the adequacy of such RMPs and require revisions of RMPs when necessary to assure compliance with § 68.50.

(b) Stationary sources shall be selected for audits based on any of the following criteria:

(1) Accident history of the stationary source;

(2) Accident history of other stationary sources in the same industry;

(3) Quantity of regulated substances present at the stationary source;

(4) Location of the stationary source and its proximity to the public and sensitive environments;

(5) The presence of specific regulated substances;

(6) The hazards identified in the RMP; or

(7) A plan providing for neutral, random oversight.

(c) The implementing agency shall have access to the stationary source, supporting documentation, and any area where an accidental release could occur.

(d) Based on the audit, the implementing agency may issue an owner or operator of a stationary source a written preliminary determination of necessary revisions to the source's RMP in order to assure that the RMP meets the criteria of § 68.50 and reflects the purposes of subpart B of this part. This preliminary determination shall include an explanation for the basis for the revisions, reflecting industry standards and guidelines (such as AIChE/CCPS guidelines and ASME and API standards) to the extent that such standards and guidelines are applicable, and shall include a timetable for their implementation.

(e) Written response to a preliminary determination:

(1) The owner or operator shall respond in writing to a preliminary determination made in accordance with paragraph (d) of this section. The response shall state that the owner or operator will implement the revisions contained in the preliminary determination in accordance with the timetable included in the preliminary determination or shall state that the owner rejects the revisions in whole or in part. For each rejected revision, the owner or operator shall explain the basis for rejecting such revision. Such explanation may include substitute revisions.

(2) The written response under paragraph (e)(1) of this section shall be received by the implementing agency within 90 days of the issuance of the preliminary determination or a shorter period of time as the implementing agency specifies in the preliminary determination as necessary to protect human health and the environment. Prior to the written response being due and upon written request from the owner or operator, the implementing agency may provide in writing additional time for the response to be received.

(f) After providing the owner or operator an opportunity to respond under paragraph (e) of this section, the implementing agency may issue the owner or operator a written final determination of necessary revisions to the source's RMP. The final determination may adopt or modify the revisions contained in the preliminary determination under paragraph (d) of this section or may adopt the substitute revisions provided in the response under paragraph (e) of this section. A final determination that adopts a revision rejected by the owner or operator shall include an explanation of the basis for the revision. A final determination that fails to adopt a substitute revision provided under paragraph (e) of this section shall include an explanation of the basis for finding such substitute revision unreasonable.

(g) Thirty (30) days after the issuance of a final determination under paragraph (f) of this section, the owner or operator shall be in violation of §§ 68.12, 68.50(a), and 68.60 unless the owner or operator revises the RMP prepared under § 68.50 as required by the final determination, submits copies of the revised RMP to the entities identified in § 68.50(a), and registers the revised plan as provided in § 68.12 (b) and (c).

(h) The public shall have access to the preliminary determinations, responses, and final determinations under this section.

(i) Nothing in this section shall preclude, limit, or interfere in any way with the authority of EPA or the state to exercise its enforcement, investigatory, and information gathering authorities concerning this part under the Clean Air Act.

Subpart C—List of Regulated Substances and Thresholds for Accidental Release Prevention [Reserved]

[FR Doc. 93–25642 Filed 10–19–93; 8:45 am]
BILLING CODE 6560–50–P

federal register

Wednesday
October 20, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice of Approved Tribal-State Compact

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs; Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary - Indian Affairs, Department of the Interior, through her delegated authority, has approved the Interim Compact Between the Chippewa Cree Tribe of the Rocky Boy's Reservation and the State of Montana Regarding Class III Gaming on the Rocky Boy's Reservation, enacted on April 19, 1993.

DATES: This action is effective on October 20, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: October 1, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–25683 Filed 10–19–93; 8:45 am]

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federal register

Wednesday
October 20, 1993

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 201

Labeling for Over-the-Counter Oral Drug Products Containing Aspirin, Buffered Aspirin, or Aspirin in Combination With an Antacid; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 77N-0094]

RIN 0905-AA06

Labeling for Over-the-Counter Oral Drug Products Containing Aspirin, Buffered Aspirin, or Aspirin in Combination With an Antacid

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations to require that the labeling for over-the-counter (OTC) oral drug products that contain aspirin, buffered aspirin, and aspirin in combination with an antacid prominently bear a statement advising persons using these products to consult a doctor before taking them for their heart or for other new uses of aspirin. This labeling does not apply to aspirin in combination with acetaminophen, a diuretic, or any cough-cold ingredients FDA is taking this action to inform the public about the risks associated with long-term, unsupervised use of these products and of the importance of medical evaluation and supervision for safe long-term use of these products.

DATES: Written comments by December 20, 1993. Written comments on the agency's economic impact determination by December 20, 1993. FDA is proposing that the final rule based on this proposal be effective 6 months after the date of publication of the final rule in the **Federal Register.**

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5000.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of November 16, 1988 (53 FR 46204), FDA published, under § 330.10(a)(7) (21 CFR 330.10(a)(7)), a notice of proposed rulemaking, in the form of a tentative final monograph, that would establish conditions in part 343 (21 CFR part 343) under which OTC internal analgesic, antipyretic, and antirheumatic drug products are generally recognized as safe and effective and not misbranded. In the professional labeling in § 343.80, the agency proposed a number of indications for products containing aspirin, buffered aspirin, or aspirin in combination with an antacid. The agency acknowledged that information about these uses of aspirin products (e.g., reducing the risk of myocardial infarction in patients with a previous infarction or unstable angina pectoris) has appeared in newspapers and magazines and on television and radio. In addition, the agency recognized that some manufacturers have included statements in the labeling of their OTC aspirin drug products that advise people to see their doctor for other (or new) uses of aspirin. The agency stated that because such information may be of benefit, it had no objection to a general statement of this type being included in the product's labeling. The agency expressed concern, however, that people may read or hear this information and self-medicate with an OTC aspirin drug product for one of these conditions without consulting their doctor.

Accordingly, the agency emphasizes that people should use aspirin for professional indications only under a doctor's supervision. Aspirin, particularly if used for a long period of time, may cause serious side effects, including bleeding and stroke (Ref. 1). In addition, people should not self-medicate for professional indications because they lack the necessary training to determine whether they are likely to benefit from this treatment. Because of these concerns, the agency stated that any information provided in aspirin product labeling about other (professional) uses must be accompanied by a counterbalancing statement that the product should not be used for more than 10 days without consulting a doctor. This period of use is consistent with the OTC labeling proposed for aspirin in the tentative final monograph. In § 343.50(f) of the tentative final monograph the agency proposed the following optional statement for aspirin products: "See your doctor for other uses of" [insert name of ingredient or trade name of product]", but do not use for more than 10 days without consulting your doctor because serious side effects may occur." The agency invited specific comment on this statement or other alternative labeling, the appropriate placement for the statement in labeling, whether the 10-day limitation on use should be an integral part of any such statement, and whether this information should be part of the required labeling for aspirin products (53 FR 46204 at 46252).

II. Summary of the Comments Received

Two comments requested that the optional statement proposed in § 343.50(f) be shortened to include only the part that reads: "See your doctor for other uses of" [insert name of ingredient or trade name of product]. The comments requested the agency not to require the part of the statement that reads: "but do not use for more than 10 days without consulting your doctor because serious side effects may occur."

One comment stated that the full statement was confusing and "counter productive" because it "sends mixed messages" and achieves the opposite effect of what FDA intended. The comment contended that the statement alerts people to confer with their doctor about nonlabeled uses, while cautioning them against long-term use without consulting a physician. The comment added that the language is likely to unnecessarily frighten individuals for whom long-term aspirin therapy has been prescribed. The comment stated that highlighting the risk of serious side effects is inappropriate for patients prescribed aspirin by their physician, when a risk-benefit judgment has been made. The comment added that the warning could discourage patients from taking aspirin that had been prescribed by their doctor. According to the comment, the result could be dangerous if the aspirin is being used to treat a serious condition. The comment also argued that information against long-term use without a physician's direction and a list of adverse effects already appear in the warnings and directions. The comment added that inclusion of side effects in the proposed statement is redundant. Finally, the comment stated that there is controversy over whether long-term aspirin use leads to increased incidence of side effects. The comment referred to the absence of a significant difference in gastrointestinal side effects between the placebo and aspirin study groups in the Physicians' Health Study (Ref. 2).

The second comment contended that the part of the statement about side effects and not using the product for more than 10 days causes several problems. It suggests that people can experiment with nonlabeled uses for less than 10 days without consulting a doctor. It is redundant because it repeats the restriction on use for more than 10 days already set forth in the standard warnings. It is ambiguous with respect to its reference to serious side effects because it refers to nonlabeled uses. The

comment stated that any nonlabeled use without consulting a physician should be discouraged, but argued that the proposed language would not achieve that purpose.

III. The Agency's Conclusions on the Comments

The agency disagrees with the comment asserting that the optional labeling statement was contrary to the agency's objective for this labeling. The objective of the statement is to inform individuals, who may be informed (by the media or advertisements) about other new uses of aspirin products, that such uses are not risk-free, that adverse effects are associated with these uses, and that the safe and effective use of the drug product for new uses requires the advice and supervision of a physician. The agency is concerned that people may not understand the risks associated with new uses of familiar products, long available without prescription, especially uses that involve lower doses for a long period of time.

The agency disagrees with one comment's contention that reference to serious side effects is redundant and would unnecessarily frighten patients taking the drug on the advice of their doctor. The general reference to serious side effects in the statement does not repeat other cautionary information found in the OTC product labeling. The reason for advising people of potential, serious side effects with new uses is to encourage them to discuss such uses with their doctor and to inquire about potential risks. The agency does not believe that the proposed statement would frighten into noncompliance those people for whom chronic aspirin therapy has already been prescribed by their doctor. On the contrary, the statement should reassure patients that they have taken appropriate precautions by checking with their doctor prior to taking the product. Patients under a doctor's care, for whom reference to serious side effects raises additional questions, are likely to discuss their concerns with their doctor if they have not already done so. People considering self-medication for a new use are more likely, after having been alerted to the potential for side effects, to discuss risks with their doctor.

With respect to the comment that controversy exists over increased risk of side effects with long-term use, the agency notes that the comment confined its consideration of risk to gastrointestinal side effects alone, as reported in the Physician's Health Study (Ref. 2). The incidence of gastrointestinal bleeding in this large trial was not different between the aspirin group and the placebo group. However, the Steering Committee of the Physicians' Health Study Research Group, in its preliminary report, specifically noted that this finding was partly attributable to the prerandomization run-in phase, which excluded those unable to tolerate aspirin, and partly related to the particular dose and regimen employed in the study. In addition to gastrointestinal bleeding, however, the study recorded a nonsignificant increase of total strokes in this selected population and a significantly increased number of moderate-to-severe or fatal hemorrhagic strokes. Similar observations have been reported in other studies. A study in healthy British doctors reported a nonsignificant increase in fatal or disabling strokes in the aspirin group (Ref. 3). In the "Swedish Aspirin Low-dose Trial" (SALT) (Ref. 4), while there were only slightly more frequent gastrointestinal events (excluding bleeding) in patients taking 75 milligrams of aspirin, a significant excess of total bleeding episodes occurred in the 676 subjects in the aspirin group compared with the 684 subjects taking placebo (7.2 versus 3.2 percent; $p=0.001$). Significantly more bleeding events in patients on aspirin were considered severe or resulted in discontinuation of the study drug ($p=0.04$); five patients on aspirin suffered fatal hemorrhagic strokes compared to none on placebo ($p=0.03$). In conclusion, a narrow focus on the incidence of only gastrointestinal bleeding in the Physician's Health Study (Ref. 2) cannot be extrapolated to exclude all risks that may be associated with professional uses of aspirin in an unselected population.

The agency agrees, however, that including the restriction against use for more than 10 days without consulting a doctor in the optional warning repeats the language set forth in the standard warning and is, therefore, redundant. The agency also agrees that such a statement, made in regard to new uses, may be incorrectly interpreted to imply that people can safely take the product for such uses for less than 10 days without consulting a doctor. Therefore, the agency is deleting that portion of the statement.

IV. The Agency's Proposal

Since publication of the tentative final monograph on November 16, 1988, information on the use of aspirin for preventing heart attack and stroke has continued to appear in the news media. Thus, public awareness of new uses of aspirin has continued to increase without commensurate awareness of risks associated with such uses. Given this publicity, the long-established availability and widespread use of OTC aspirin products, and the public perception of the safety of aspirin based on its long history for short-term uses, the agency believes that increasing numbers of individuals might initiate chronic self-medication for new uses without the advice of a doctor. The agency is aware that some manufacturers have voluntarily included the optional statement proposed in § 343.50(f) of the tentative final monograph, or a similar statement, in the labeling of their OTC aspirin products. However, there are many aspirin products in the marketplace without a labeling statement of this type. The agency considers it very important to have a required labeling statement on all OTC oral aspirin drug products to inform people of the need to see a doctor prior to using the product for any professional indications. The agency considers this need important enough to take this labeling statement out of the proposed rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products before completion of the entire monograph. The agency proposes that the statement appear in § 201.314 (21 CFR 201.314) until the final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products is completed. Then, it will be incorporated into the final monograph.

While professional labeling proposed in the tentative final monograph also includes indications for rheumatoid arthritis, juvenile rheumatoid arthritis, systemic lupus erythematosus, osteoarthritis (degenerative joint disease), ankylosing spondylitis, psoriatic arthritis, Reiter's syndrome, and fibrositis, the agency is concerned primarily with the use of aspirin products to reduce the risk of cardiovascular and cerebrovascular events. Such use is more likely to be initiated by otherwise healthy people who are not under a doctor's care. Therefore, the agency is proposing that this new labeling statement be required for use on products containing aspirin ingredients identified in proposed § 343.10(b)(1) and (b)(2), and § 343.20(b)(3). The labeling of these products would be required to state, in a prominent place, the following: "IMPORTANT: See your doctor before taking this product for your heart or for other new uses of aspirin, because serious side effects could occur with self treatment." This labeling statement does not apply to aspirin used in

combination products described in § 343.20(a), (b)(2), and (b)(4).

Because the statement has been changed since it was originally proposed in the tentative final monograph, the agency is proposing the new statement for public comment in this document. The agency invites specific comment whether the introductory word "WARNING" would be preferable to the word "IMPORTANT" and whether other words (e.g., "unlabeled") would be preferable to the word "new" in this labeling statement.

The agency believes that this important information should be conveyed in product labeling at the earliest possible date. Accordingly, the agency is proposing that this new labeling statement become effective 6 months after the date of publication of the final rule in the **Federal Register**. Further, the agency encourages manufacturers of OTC oral drug products containing aspirin, buffered aspirin, and aspirin in combination with an antacid to implement this labeling voluntarily as of the date of publication of this proposal, subject to the possibility that FDA may change the wording of the labeling statement as a result of comments filed in response to this proposal. Because FDA is encouraging the proposed new labeling statement to be used on a voluntary basis at this time, the agency advises that manufacturers will be given ample time after publication of a final rule to use up any labeling implemented in conformance with this proposal.

References

(1) Feldmann, E. G., editor, "Handbook of Nonprescription Drugs," 9th ed., American Pharmaceutical Association, Washington, p. 68, 1990.

(2) The Steering Committee of the Physicians; Health Study Research Group, "Preliminary Report: Findings from the Aspirin Component of the Ongoing Physicians' Health Study," *New England Journal of Medicine*, 318:262–264, 1988.

(3) Peto, R., et al., "Randomized Trial of Prophylactic Daily Aspirin in British Male Doctors," *British Medical Journal*, 296:313–316, 1988.

(4) The SALT Collaborative Group, "Swedish Aspirin Low-dose Trial (SALT) of 75 mg Aspirin as Secondary Prophylaxis after Cerebrovascular Ischaemic Events," *Lancet*, 338:1345–1349, 1991.

V. Economic Impact

FDA has examined the regulatory impact and regulatory flexibility implications of this proposed rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). This proposed regulation imposes direct one time costs associated with changing product labels to include the required labeling statement. FDA estimates those costs to total less than $5 million. Therefore, the agency has determined that the proposed rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC oral drug products containing aspirin, buffered aspirin, and aspirin in combination with an antacid. Types of impact may include, but are not limited to, costs associated with relabeling or repackaging.

Comments regarding the impact of this rulemaking on OTC drug products containing aspirin, buffered aspirin, and aspirin in combination with an antacid should be accompanied by appropriate documentation. A period of 60 days from the date of publication of this proposed rulemaking in the **Federal Register** will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before December 20, 1993, submit to the Dockets Management Branch (address above) written comments on the proposed regulation. Written comments on the agency's economic impact determination may be submitted on or before December 20, 1993. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR Part 201 be amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 508, 510, 512, 530–542, 701, 704, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 360gg-360ss, 371, 374, 376); secs. 215, 301, 351, 361 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 264).

2. Section 201.314 is amended by adding new paragraph (i) to read as follows:

§ 201.314 Labeling of drug preparations containing salicylates.

* * * * *

(i)(1) The labeling of orally administered over-the-counter drug products containing aspirin, buffered aspirin, and aspirin in combination with an antacid subject to this paragraph is required to prominently bear the following statement: "IMPORTANT: See your doctor before taking this product for your heart or for other new uses of aspirin, because serious side effects could occur with self treatment." This labeling statement does not apply to aspirin used in combination with acetaminophen, any cough-cold ingredient, and any diuretic ingredient.

(2) Any product subject to this paragraph that is not labeled as required by this paragraph and that is initially introduced or initially delivered for introduction into interstate commerce after [insert date 6 months after date of publication of the final rule in the **Federal Register**], is misbranded under sections 201(n) and 502(a) and (f) of the Federal Food, Drug, and Cosmetic Act.

Dated: June 11, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–25673 Filed 10–19–93; 8:45 am]

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federal register

Wednesday
October 20, 1993

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 201
Labeling of Oral and Rectal Over-the-Counter Drug Products Containing Aspirin and Nonaspirin Salicylates; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 93N-0182]

RIN 0905-AA06

Labeling of Oral and Rectal Over-The-Counter Drug Products Containing Aspirin and Nonaspirin Salicylates; Notice of Proposed Rulemaking

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise the Reye syndrome warning required for oral and rectal over-the-counter (OTC) human drug products containing aspirin. FDA is also proposing to require the warning on OTC drug products containing nonaspirin salicylates. The revised warning will inform consumers of the initial symptoms of Reye syndrome and advise that aspirin or nonaspirin salicylate products should not be given to children or teenagers who are recovering from chicken pox or the flu. FDA is issuing this proposal after considering comments submitted to the rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products and other available information.

DATES: Written comments by December 20, 1993. Written comments on the agency's economic impact determination by December 20, 1993. FDA is proposing that the final rule based on this proposal be effective 6 months after the date of publication of the final rule in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5000.

SUPPLEMENTARY INFORMATION:

I. Introduction

Reye syndrome is a rare but serious illness that affects young people. The agency has received reports associating Reye syndrome with the use of aspirin and nonaspirin salicylate drug products. In the **Federal Register** of March 7, 1986 (51 FR 8180), FDA published a final regulation requiring that the labeling of oral and rectal OTC aspirin and aspirin-containing drug products include a warning that these drug products should not be used to treat chicken pox or flu symptoms in children and teenagers before consulting a doctor about Reye syndrome. The warning appears in § 201.314(h) (21 CFR 201.314(h)). The regulation provided that the Reye syndrome warning requirement would expire June 6, 1988, unless the agency acted to extend it. In the **Federal Register** of January 22, 1988 (53 FR 1796), FDA proposed to make permanent the requirement for a Reye syndrome warning, and in the **Federal Register** of June 9, 1988 (53 FR 21633), FDA made the warning permanent for oral and rectal OTC drug products containing aspirin.

In the **Federal Register** of November 16, 1988 (53 FR 46204), FDA published a notice of proposed rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products. The agency indicated (53 FR 46204 at 46205) that the Reye syndrome warning finalized in the **Federal Register** of June 9, 1988, would be incorporated into the final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products. Interested persons were invited to file by May 16, 1989, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. New data could have been submitted until November 16, 1989, and comments on the new data could have been submitted until January 16, 1990.

The National Reye's Syndrome Foundation (NRSF) commented that the Reye syndrome warning currently required for OTC aspirin and aspirin-containing drug products should be extended to all salicylate-containing drug products (Ref. 1). NRSF did not include any data to support its request, but stated that too many cases of Reye syndrome have been linked to one product, not intended for use as an analgesic, that contains bismuth subsalicylate, for this to be a coincidental occurrence.

Subsequently, the agency became aware that a manufacturer of a widely marketed OTC drug product containing bismuth subsalicylate (used for the relief of symptoms associated with overindulgence in food and drink) had voluntarily included a Reye syndrome warning in the product's labeling (Ref. 2). The warning is similar to the warning required by § 201.314(h)(1). In a proposed amendment to the tentative final monograph for OTC orally administered drug products for relief of symptoms associated with overindulgence in food and drink, published in the **Federal Register** of May 5, 1993 (58 FR 26886), the agency proposed a Reye syndrome warning for OTC overindulgence drug products that contain bismuth subsalicylate. That warning states: "WARNING: Children and teenagers who have or are recovering from chicken pox, flu symptoms, or flu should NOT use this product. If nausea, vomiting, or fever occur, consult a doctor because these symptoms could be an early sign of Reye syndrome, a rare but serious illness."

The agency also stated that it was considering the appropriateness of revising the current Reye syndrome warning for oral and rectal OTC drug products containing aspirin in § 201.314(h)(1) to be similar to the language in the May 5, 1993, proposal. The agency stated that based on the comments received, in a future issue of the **Federal Register**, the agency may propose to revise the current Reye syndrome warning in § 201.314(h)(1). The comment period for that proposal closed on July 6, 1993. The agency received four comments in response to the proposal. The agency is currently evaluating the comments that were received. Before a final decision is made, the agency finds it appropriate, at this time, to propose revising the current Reye syndrome warning and also extending it to nonaspirin salicylates. The agency will evaluate all comments on both proposals before making a final decision.

At the time that FDA promulgated the existing Reye syndrome warning for OTC drug products containing aspirin, scientific research was focused primarily on the association of Reye syndrome and aspirin rather than the broader category of drug products containing nonaspirin salicylates. Thus, the warning was limited to aspirin.

In the final rule for the labeling of oral and rectal OTC aspirin and aspirin-containing drug products (53 FR 21633 at 21635), the agency noted that a Public Health Service study (Ref. 3) reported that there were too few subjects whose reported exposures were to nonaspirin salicylates for a meaningful analysis. Almost all of the case subjects and the majority of the controls who took salicylates took aspirin; only a small percentage of subjects took nonaspirin salicylates. Only 1 case subject and 11 controls were exposed to bismuth subsalicylate, and only 2 controls were exposed to magnesium salicylate. In assessing the independent risk of aspirin and nonaspirin salicylates, a significant association was found with

aspirin. However, the authors reported that the risk associated with nonaspirin salicylates independent of aspirin could not be assessed because only two case subjects did not have a confounding exposure to aspirin. In the final rule, the agency stated its belief that, at the time, priority must be given to continuing the warning on OTC aspirin and aspirin-containing drug products. Further, the agency indicated that it would consider extending the scope of the warning to nonaspirin salicylates if warranted by further research or other appropriate information (53 FR 21633 at 21635).

II. The Agency's Proposal

While cases of Reye syndrome are rare, the agency is aware of two fatalities from Reye syndrome—one reported to be associated with the use of bismuth subsalicylate and the other associated with the use of a calcium salicylate containing drug product (Ref. 4). One death, which occurred in January 1989, involved a 6-year-old child who reportedly developed Reye syndrome following the administration of the label-recommended dosage of an OTC bismuth subsalicylate product for the treatment of flu-like symptoms, diarrhea, and nausea. The other death, which occurred in 1985, involved a 3-month-old infant whose upper respiratory tract infection was treated with a theophylline drug product that included calcium salicylate as a solubilizing agent. Sarrll and Duxbury (Ref. 5) reported one case of Reye syndrome associated with the use of teething gel containing choline salicylate. No outcome was mentioned. In addition, animal and in vitro biochemical data suggest that salicylic acid/salicylate may contribute to the metabolic derangement of liver cell mitochondria that leads to the mitochondrial injury characteristic of Reye syndrome (Refs. 6 through 9).

Aspirin is deacetylated in the gut, blood, and liver to salicylic acid, and the major plasma component after ingestion of aspirin is salicylate, the ionized form of salicylic acid (Ref. 10). Because the exact role of aspirin and its metabolic products in Reye syndrome is unknown, the agency believes the aspirin association with Reye syndrome may be applicable to nonaspirin salicylate products as well. Some manufacturers of OTC and prescription drug products containing nonaspirin salicylates currently voluntarily include a warning against the use of these drug products in children and teenagers for flu or chicken pox symptoms (Refs. 11 and 12). Accordingly, the agency is proposing that OTC internal analgesic/antipyretic drug products containing any nonaspirin salicylates bear a Reye syndrome warning. The tentative final monograph identified the following ingredients as nonaspirin salicylates: Calcium salicylate, magnesium salicylate, potassium salicylate, and sodium salicylate (53 FR 46204 at 46249).

In the amendment to the tentative final monograph for OTC orally administered drug products for relief of symptoms associated with overindulgence in food and drink (58 FR 26886 at 26888), the agency proposed the following Reye syndrome warning for products that contain bismuth subsalicylate: "Children and teenagers who have or are recovering from chicken pox, flu symptoms, or flu should NOT use this product. If nausea, vomiting, or fever occur, consult a doctor because these symptoms could be an early sign of Reye syndrome, a rare but serious illness." This proposed warning differs from the existing warning in § 201.314(h)(1), which states: "WARNING: Children and teenagers should not use this medicine for chicken pox or flu symptoms before a doctor is consulted about Reye syndrome, a rare but serious illness reported to be associated with aspirin." However, as discussed in the proposal for bismuth subsalicylate products, the agency believes that the new warning provides important additional information (i.e., not to use such products during the period when the child appears to be recovering from the flu or chicken pox, plus a description of the earliest recognizable symptoms of Reye syndrome) that should be included in the labeling of these OTC drug products. The agency considers the more specific information provided by the proposed warning particularly important now that public education programs on Reye Syndrome have significantly diminished. Further, the agency believes that all salicylate containing OTC drug products should bear uniform labeling with respect to Reye syndrome. While the existing warning has served its purpose well, the agency considers the newer warning being proposed to be more informative to future users of these products. Therefore, the agency is proposing that all OTC drug products containing aspirin or nonaspirin salicylates (including bismuth subsalicylate) bear the newer proposed warning.

FDA is proposing to amend § 201.314(h) now, instead of proposing to include the warning in the final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products when that monograph is issued at a future date. This approach will bring uniformity and consistency to the labeling of OTC drug products containing aspirin or nonaspirin salicylates, at the earliest possible date. When the final monograph is issued, it will contain a cross-reference to the Reye syndrome warning in § 201.314(h). That warning will apply to all OTC aspirin and nonaspirin salicylates whether or not marketed pursuant to an OTC drug monograph. The agency invites comment on the newly proposed Reye syndrome warning.

References

(1) Comment No. C144, Docket No. 77N-0094, Dockets Management Branch.

(2) Copy of Labeling for Pepto-Bismol, in OTC Vol. 03RSNPR, Docket No. 93N-0182, Dockets Management Branch.

(3) Hurwitz, E. S. et al., "Public Health Service Study of Reye's Syndrome and Medications," *Journal of the American Medical Association*, 257(14):1905–1911, 1987.

(4) Adverse Drug Reaction Reports, in OTC Vol. 03RSNPR, Docket No. 93N-0182, Dockets Management Branch.

(5) Sarrll, D. W. and A. J. Duxbury, "Choline Salicylates and Reye Syndrome," *British Dental Journal*, 9:317–318, 1986.

(6) Pranzatelli, M. R. and D. C. De Vivo, "Review Pharmacology of Reye Syndrome," *Clinical Neuropharmacology*, 10:96–125, 1987.

(7) Trauner, D. A., E. Horvath, and L. E. Davis, "Inhibition of Fatty Acid Beta Oxidation by Influenza B Virus and Salicylic Acid in Mice: Implications for Reye's Syndrome," *Neurology*, 38:239–241, 1988.

(8) Martens, M. E. and C. Lee, "Reye Syndrome: Salicylates and Mitochondrial Functions," *Biochemical Pharmacology*, 33:2869–2876, 1984.

(9) Yoshida, Y. et al., "Effect of Salicylic Acid on Mitochondrial Peroxisomal Fatty Acid Catabolism," *Pediatric Research*, 23:338–341, 1988.

(10) Shearn, M. A., "Nonsteroidal Anti-inflammatory Agents; Nonopiate Analgesics; Drugs Used in Gout," in "Basic and Clinical Pharmacology," 2d ed., edited by B. G. Katzung, Lange Medical Publications, Los Altos, CA, pp. 400–403, 1984.

(11) Schumacher, M. M., editor, "Physicians Desk Reference for Nonprescription Drugs," 13th ed., Medical Economics Co., Inc., Montvale, NJ, pp. 549–550, 1992.

(12) Schumacher, M. M., editor, "Physicians Desk Reference for Prescription Drugs," 47th ed., Medical Economics Co., Inc., Montvale, NJ, pp. 1891–1892, 1993.

III. Economic Impact

FDA has examined the regulatory impact and regulatory flexibility implications of this proposed rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). This proposed regulation imposes direct one time costs associated with changing product labels to include the required labeling statement. FDA

estimates those costs to total less than $5 million. Therefore, the agency has determined that the proposed rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC oral and rectal drug products containing aspirin or nonaspirin salicylates. Types of impact may include but are not limited to costs associated with relabeling or repackaging.

Comments regarding the impact of this rulemaking on OTC drug products containing aspirin or nonaspirin salicylates should be accompanied by appropriate documentation. A period of 60 days from the date of publication of this proposed rulemaking in the Federal Register will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before December 20, 1993, submit written comments on the proposed regulation to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before December 20, 1993. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 201 be amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 508, 510, 512, 530–542, 701, 704, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 360gg–360ss, 371, 374, 376); secs. 215, 301, 351, 361 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 264).

2. Section 201.314 is amended by revising paragraphs (h)(1) and (h)(4) to read as follows:

§ 201.314 Labeling of drug preparations containing salicylates.

* * * * *

(h)(1) The labeling of orally or rectally administered over-the-counter drug products containing aspirin or nonaspirin salicylates subject to this paragraph is required to prominently bear the following warning: "WARNING: Children and teenagers who have or are recovering from chicken pox, flu symptoms, or flu should NOT use this product. If nausea, vomiting, or fever occur, consult a doctor because these symptoms could be an early sign of Reye syndrome, a rare but serious illness."

* * * * *

(4) Any product subject to this paragraph that is not labeled as required by this paragraph and that is initially introduced or initially delivered for introduction into interstate commerce after [insert date 6 months after date of publication of the final rule in the **Federal Register**], is misbranded under sections 201(n) and 502 (a) and (f) of the Federal Food, Drug, and Cosmetic Act.

Dated: August 17, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–25676 Filed 10–19–93; 8:45 am]

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federal register

Wednesday
October 20, 1993

Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 341

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph for OTC Antitussive Drug Products

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 90N-0420]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph for OTC Antitussive Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the final monograph for over-the-counter (OTC) antitussive drug products to require a drug interaction precaution statement in the labeling of OTC antitussive (relieves cough) drug products containing dextromethorphan or dextromethorphan hydrobromide. These drug products should not be used by persons who are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI), without first consulting a health professional. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: October 20, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 9, 1976 (41 FR 38312), FDA published an advance notice of proposed rulemaking for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products. The Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (the Panel) placed the ingredients dextromethorphan and dextromethorphan hydrobromide (hereafter referred to generally as dextromethorphan) in Category I (generally recognized as safe and effective for OTC use) as an antitussive. The Panel recommended several warnings for OTC antitussives, but made no recommendation concerning an interaction with MAOI drugs. These drugs, which inhibit monoamine oxidase (MAO), are available by prescription only. At the time of the Panel's review, MAOI drugs were used primarily to treat depression or high blood pressure. Since then, the use of MAOI drugs for depression and other psychiatric illnesses has increased, while use to treat high blood pressure has essentially ceased. New MAOI drugs, which are relatively selective monoamine oxidase type B (MAO B) inhibitors, are coming into use to treat Parkinson's disease.

At the time of the Panel's review, the only known interaction with MAOI drugs that was pertinent to cough-cold drug products involved the sympathomimetic amines, which are used as bronchodilators (41 FR 38312 at 38370 to 38371) and nasal decongestants (41 FR 38312 at 38396 to 38397). The Panel proposed the following labeling for bronchodilator drug products containing sympathomimetic amines: "*Drug interaction precaution.* Do not take this product if you are presently taking a prescription antihypertensive or antidepressant drug containing a monoamine oxidase inhibitor." The Panel proposed the same labeling for oral nasal decongestant drug products containing sympathomimetic amines, but the Panel added the following words at the end of the statement: "except under the advice and supervision of a physician."

In the tentative final monograph for OTC bronchodilator drug products, published in the **Federal Register** of October 26, 1982 (47 FR 47520 at 47526), the agency proposed to simplify the precautionary statement to read: "*Drug interaction precaution.* Do not take this product if you are presently taking a prescription drug for high blood pressure or depression, without first consulting your doctor." (See proposed § 341.76(c)(3) at 47 FR 47527.) In the final monograph for OTC bronchodilator drug products, published in the **Federal Register** of October 2, 1986 (51 FR 35326 at 35338), the agency substituted the word "use" for the word "take," because "use" can apply to both inhalation and oral dosage forms. This statement appears in § 341.76(c)(4) of the final monograph.

In the tentative final monograph for OTC nasal decongestant drug products, published in the **Federal Register** of January 15, 1985 (50 FR 2220 at 2231), the agency proposed the same precautionary statement as proposed in the tentative final monograph for OTC bronchodilator drug products. (See proposed § 341.80(c)(1)(i)(*d*) at 50 FR 2239.) A final monograph for OTC nasal decongestant drug products has not yet been published.

In the **Federal Register** of June 19, 1992 (57 FR 27666), FDA published a notice of proposed rulemaking to amend the final monograph for OTC antitussive drug products to require an MAOI drug interaction precaution in the labeling of OTC drug products containing dextromethorphan or dextromethorphan hydrobromide. The agency described new information and reports of drug-drug interactions that suggested a need for the precaution. New § 341.74(c)(4)(v) was proposed, as follows:

For products containing dextromethorphan or dextromethorphan hydrobromide as identified in § 341.14(a)(3) and (a)(4) when labeled for adults or for adults and children under 12 years of age. Drug Interaction Precaution. Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product.

The agency also proposed to require the MAOI drug interaction precaution in the labeling of OTC drug products containing dextromethorphan when labeled only for children under 12 years of age. New § 341.74(c)(4)(vi) was proposed, as follows:

For products containing dextromethorphan or dextromethorphan hydrobromide as identified in § 341.14(a)(3) and (a)(4) when labeled only for children under 12 years of age. Drug Interaction Precaution. Do not give this product to a child who is taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting the child's doctor. If you are uncertain whether your child's prescription drug contains an MAOI, consult a health professional before giving this product.

The agency invited written comments by August 18, 1992, on the specific wording of these warnings and the best way to convey this information to persons who are taking MAOI drugs.

In the **Federal Register** of August 6, 1992 (57 FR 34735), the agency extended the comment period to October 5, 1992, to obtain additional comments on whether the drug interaction precaution statement should be expanded to include MAO B drugs, such as selegiline. The agency asked whether the proposed drug interaction statement should be expanded to read: "*Drug interaction precaution.* Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), without first

consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product." The agency invited comments and information on interactions between selegiline and dextromethorphan and asked whether, from a public health perspective, it would be appropriate to expand the dextromethorphan drug interaction precaution, as indicated.

Elsewhere in this issue of the **Federal Register**, the agency is amending the final monograph for OTC bronchodilator drug products so that the MAOI drug interaction precautions are consistent for OTC antitussive and bronchodilator drug products. In a future issue of the **Federal Register**, the agency intends to include the same drug interaction precautions in the final rule for OTC nasal decongestant drug products. These statements will apply to oral nasal decongestants containing sympathomimetic amine drugs.

In response to the proposed rule, the agency received comments from one physician, two drug manufacturers, and one drug manufacturers' association. Copies of the comments are on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. None of the comments objected to having a new drug interaction precaution in the labeling of OTC antitussive drug products containing dextromethorphan. However, several comments offered suggestions for alternative wording.

II. The Agency's Conclusions on the Comments

1. One comment stated that the proposed additional statement regarding drug interactions between dextromethorphan and MAO inhibitors appears adequate. The comment noted that the agency's proposal was thorough, contained an excellent review of the existing medical knowledge, and shows that there is a significant body of information to support the drug interaction precaution. The comment added that the labeling for bronchodilator and nasal decongestant drug products should be amended as well, because the three groups are quite similar.

The agency agrees that the warning for OTC bronchodilator, oral nasal decongestant, and antitussive drug products should be consistent. Precautions for antitussive and bronchodilator drug products are addressed in this issue of the **Federal Register**. The same drug interaction precautions will be included in the final monograph for OTC nasal decongestant drug products in a future issue of the **Federal Register**.

2. Based on experience with labeling used on its own products, one comment suggested the following wording: "*Drug Interaction Precaution:* Do not take this product if you are presently taking a prescription monoamine oxidase inhibitor without first consulting your physician." For products labeled only for children under 12 years of age, the comment suggested: "*Drug Interaction Precaution:* Do not give this product to a child who is presently taking a prescription monoamine oxidase inhibitor without first consulting your child's physician." The comment stated that professional labeling for its dextromethorphan-containing drug products has included a MAOI interaction statement since 1977. The comment added that consumer labeling for its OTC drug product containing dextromethorphan and guaifenesin once used the statement: "*Drug Interaction Precaution:* Do not take this product if you are presently taking a prescription drug for high blood pressure or depression without first consulting your doctor." The same statement was proposed in the tentative final monograph for OTC bronchodilator drug products (47 FR 47520 at 47527) and the tentative final monograph for OTC nasal decongestant drug products (50 FR 2220 at 2239, January 15, 1985). The comment complained that this language appeared to cause confusion among health professionals and consumers, so it was subsequently modified to read: "*Drug Interaction Precaution:* Do not take this product if you are presently taking a prescription monoamine oxidase inhibitor without first consulting your physician." The comment stated that this newer language has provided a clear, succinct message to consumers, physicians, and other health professionals. The comment added that when MAOI drugs are prescribed, patients are fully informed about all necessary precautions and are provided with informational brochures on the many foods and drugs with known MAOI interactions.

The agency disagrees that the comment's suggested wording adequately conveys all information necessary for consumers to make an appropriate decision regarding use of the OTC drug product. Specifically, the suggested wording does not include an abbreviated name for monoamine oxidase inhibitor, likely medical uses for the MAOI, or provide for consultation with health professionals other than doctors. The agency acknowledges that this additional information lengthens the precaution. However, the serious nature of the adverse reactions requires that people taking MAOI drugs be given as much information as possible, so that they can make the correct decision about the use of the OTC drug product. The term "monoamine oxidase inhibitor" alone is technical and may not be as easily remembered as the shorter term "MAOI." Accordingly, the agency believes that both terms should be used. Some consumers may remember one term, while other consumers may remember the other term. Having both terms in the precaution helps ensure greater recognition among more consumers.

Also, those consumers who do not recognize either term may at least recognize that their prescription drug is for one of the indications listed. Hopefully, such persons will consult their doctor or other health professional before taking the OTC drug product. The agency acknowledges that when MAOI drugs are prescribed, patients should be fully informed of the precautions and interactions associated with the drug. However, the agency is concerned that some patients may not be fully informed about the MAOI drug, may not fully understand or remember all the information given them or, with the passage of time, may forget or lose information that has been provided. The agency believes the OTC drug product labeling should be as informative as possible and should reinforce the MAOI prescribing information. Accordingly, the comment's suggested language is not adopted.

3. One comment suggested deleting the statement "If you are uncertain whether your prescription drug contains an MAOI, consult a health professional." The comment stated that a general informational statement urging consumers to use common sense should not be a part of the drug interaction precaution. The comment argued that the statement adds lengthy wording to already crowded labeling, is inappropriately placed as part of a specific warning, is redundant in the contexts of available patient education and of the common sense consumers apply to self-medication practice, and is not supported by adequate documentation or recommendations of the Panel.

The agency disagrees with the comment. The agency included this statement out of concern for consumers who may not understand the technical terms used in the precaution, may not remember whether their prescription drug is a MAOI, or may not retain the

informational brochures received when the MAOI drug was prescribed. The agency is also concerned that some consumers who wish to use an OTC drug product may not want to bother their doctor with questions their medication. Because of the possible severity of the adverse reactions, the agency believes it is important to tell consumers that if there is any uncertainty or doubt about using the OTC drug product, a health professional should be consulted. It is also important to remind consumers who may be reluctant to ask their doctor that other health professionals, such as pharmacists or nurses, can be alternative sources of information. The agency does not believe that label space should limit essential safety information. There are means available to extend label space, such as carton flaps or package inserts. Finally, the wording in this statement is similar to other labeling that the Panel proposed for oral nasal decongestant drug products ("except under the advice and supervision of a physician," 41 FR 38312 at 38423), and to language in the final monograph for OTC bronchodilator drug products ("without first consulting your doctor," § 341.76(c)(4)).

4. One comment urged the agency to include only those aspects of prescription labeling that are formally approved indications. The comment stated that the approved indication for MAOI drugs is depression, and the precaution statement should explicitly reference "depression" and not include overly broad references to unapproved uses, e.g., "emotional disturbances." The comment stated that it is commonplace for prescription drugs, approved for one or more conditions, to be used experimentally in private practice or in formal clinical trials to treat conditions that do not appear in the approved prescription labeling. The comment asserted, however, that the establishment of OTC drug labeling that would accommodate ever changing unapproved uses of the prescription drug would abuse the OTC drug product labeling. The comment suggested other approaches, such as notification of physicians and pharmacists by direct mail or through medical publications, press releases, prescription labeling, and professional organizations.

The parenthetical information, "certain drugs for depression or psychiatric or emotional conditions," was intended to alert consumers who may be taking a MAOI drug for a condition other than depression or a condition not readily identified with the term depression, such as anxiety or phobia. The agency noted in the proposal (57 FR 27666) that these uses are described in the scientific literature. In addition, the prescribing information for one MAOI, phenelzine sulfate, states the following: "[Phenelzine sulfate] has been found to be effective in depressed patients clinically characterized as 'atypical,' 'nonendogenous,' or 'neurotic.' These patients often have mixed anxiety and depression and phobic or hypochondriacal features." (Ref. 1). Because people are currently being prescribed MAOI drugs for conditions other than depression, the agency believes that these uses cannot be ignored. Consumers who take the drug for one of these other conditions need to be informed. Further, the language adopted will accommodate a certain amount of increased use of MAOI drugs, as described in the scientific literature, without the need to revise the OTC drug product labeling to cover such uses. The agency does not consider the other approaches suggested by the comment to be adequate because they target the health care professional rather than the consumer. While all of those approaches can and should be used, the consumer must be informed. Therefore, the agency is not adopting the comment's suggestions.

Reference

(1) Approved labeling for phenelzine sulfate (Parke-Davis), in OTC Vol. 04TFMA3, Docket No. 90N–0420, Dockets Management Branch.

5. One comment suggested that the precaution statement include a 2-week washout period to help ensure that patients will not discontinue the use of the MAOI in order to use the OTC drug. The comment proposed the following wording: "Do not use this product if you are presently taking a prescription monoamine oxidase inhibitor (MAOI) for depression or for 2 weeks after stopping use of a MAOI without first consulting your doctor."

The comment stated that the suggested 2-week washout period was based on scientific data, and provided references and studies in support.

One reference provided by the comment stated that the MAOI drugs used clinically in the United States are irreversible enzyme inhibitors, that return of monoamine oxidase activity following administration of an irreversible MAOI is presumably dependent upon enzyme synthesis, and that recovery of monoamine oxidase activity after irreversible inhibition may require up to 2 weeks following withdrawal of the MAOI drug (Ref. 1). Two studies submitted by the comment suggest that the rate of recovery of monoamine oxidase activity may be organ-specific and also possibly influenced by body weight and age (Refs. 2 and 3). In a study with normal volunteers, the apparent half-lives of plasma MAO and platelet MAO were determined to be 2 to 3 days and 9 days, respectively (Ref. 4). In a study of the interaction between sympathomimetic amines (phenylephrine, ephedrine, and noradrenaline) and MAOI's in normal volunteers, results showed a rise in blood pressure from phenylephrine and ephedrine during MAOI administration and for up to 14 days after discontinuation of the MAOI (Ref. 5).

The agency has reviewed the studies and information submitted by the comment and agrees that it is important to include a 2-week washout period in the precaution statement. The prescribing information for MAOI drugs states that 10 to 14 days should elapse between discontinuation of an MAOI and initiation of treatment with certain other drugs, e.g., another antidepressant, another MAOI, or general anesthesia (Refs. 6, 7, and 8). The prescribing information for tranylcypromine sulfate, a partially reversible MAOI, states that monoamine oxidase activity is recovered in 3 to 5 days, and also recommends a 10-day withdrawal period between treatments (Ref. 8).

The agency concludes that information about a withdrawal period is important for several reasons: (1) It should discourage patients from stopping their MAOI medication to take an OTC cough-cold drug product, and (2) it will help ensure that if the MAOI medication is discontinued for any reason, the OTC drug product will not be used before all or most of the MAOI is no longer in the body. Therefore, the agency is adopting the comment's suggestion to include a 2-week washout period, but is modifying the wording slightly. The comment proposed, "* * * if you are presently taking * * *," which the agency is shortening to "* * * if you are now taking * * *."

References

(1) Baldessarini, R.J., "Drugs and the Treatment of Psychiatric Disorders," in "Goodman and Gilman's The Pharmacological Basis of Therapeutics," 8th ed., edited by A.G. Gilman et al., Macmillan Publishing Co., New York, pp. 414–419, 1990.

(2) Della Corte, L., and B.A. Callingham, "The Influence of Age and Adrenalectomy on Rat Heart Monoamine Oxidase," *Biochemical Pharmacology*, 26:407–415, 1977.

(3) Planz, G., K. Quiring, and D. Palm, "Rates of Recovery of Irreversibly Inhibited Monoamine Oxidases: A Measure of Enzyme Protein Turnover," *Naunyn-Schmiedeberg's Archives of Pharmacology*, 273:27–42, 1972.

(4) Palm, D. et al., "Quantitation of Irreversible Inhibition of Monoamine

Oxidase in Man," *European Journal of Clinical Pharmacology*, 3:82–92, 1971.

(5) Elis, J. et al., "Modification by Monoamine Oxidase Inhibitors of the Effect of Some Sympathomimetics on Blood Pressure," *British Medical Journal*, 2:75–78, 1967.

(6) Approved labeling for phenelzine sulfate (Parke-Davis), in OTC Vol. 04TFMA3, Docket No. 90N–0420, Dockets Management Branch.

(7) Approved labeling for isocarboxazid (Roche), in OTC Vol. 04TFMA3, Docket No. 90N–0420, Dockets Management Branch.

(8) Approved labeling for tranylcypromine sulfate (SmithKline Beecham), in OTC Vol. 04TFMA3, Docket No. 90N–0420, Dockets Management Branch.

6. Two comments discussed possible interactions between MAO B inhibitors, such as selegiline, and OTC drug products containing dextromethorphan or sympathomimetic amines. One comment stated that it had reviewed all spontaneous reports of adverse drug experiences with its MAO B inhibitor drug product containing selegiline, as monitored in accordance with 21 CFR 314.80. The comment found no mention of a suspected drug interaction with, or concomitant use of, an OTC drug product containing dextromethorphan or sympathomimetic amines. The other comment urged the agency to limit drug interaction precautions to those that have been shown to be of significant, practical, and likely importance. Specifically, the comment stated that in the case of the selective MAOI selegiline, the approved indication is Parkinson's disease, but that disease should not be included in the OTC drug product precaution statement because the prescription package insert for selegiline explicitly states that drug-drug interactions are not likely to occur between selegiline and OTC drugs.

The agency disagrees with the comment's interpretation of the package insert for selegiline. The insert (Ref. 1) states the following:

> In theory, therefore, because MAO A of the gut is not inhibited, patients treated with selegiline at a dose of 10 milligrams (mg) a day can take medications containing pharmacologically active amines and consume tyramine-containing foods without risk of uncontrolled hypertension. To date, clinical experience appears to confirm this prediction; cheese reactions have not been reported in selegiline treated patients. The pathophysiology of the "cheese reaction" is complicated and, in addition to its ability to inhibit MAO B selectively, selegiline's apparent freedom from this reaction has been attributed to an ability to prevent tyramine and other indirect acting sympathomimetics from displacing norepinephrine from adrenergic neurons. However, until the pathophysiology of the cheese reaction is more completely understood, it seems prudent to assume that selegiline can only be used safely without dietary restrictions at doses where it presumably selectively inhibits MAO B (e.g., 10 mg/day). In short, attention to the dose dependent nature of selegiline's selectivity is critical if it is to be used without elaborate restrictions being placed on diet and concomitant drug use.

The insert for selegiline further states:

> Since the selective inhibition of MAO B by selegiline hydrochloride is achieved only at doses in the range recommended for the treatment of Parkinson's disease (e.g., 10 mg/day), overdoses are likely to cause significant inhibition of both MAO A and MAO B. Consequently, the signs and symptoms of overdose may resemble those observed with marketed nonselective MAO inhibitors (e.g., tranylcypromine, isocarboxazid, and phenelzine) (Ref. 1).

The agency is aware that Blackwell has reported that, while selegiline at low dosage inhibits only MAO B, at antidepressant dosages (over 20 mg daily) the drug loses its specificity and hypertensive reactions begin to occur (Ref. 2).

The insert also describes interactions between selegiline and meperidine, which is typical of the interaction of meperidine with other MAOI drugs. The drug interaction section of the insert states: "No interactions attributed to the combined use of selegiline and other drugs have been reported. However, because the data base of documented clinical experience is limited, the level of reassurance provided by this lack of adverse reporting is uncertain."

The loss of selectivity at doses higher than 10 mg per day raises concerns that drug interactions may occur. Further, the agency does not find the lack of adverse reaction reports for selegiline to be reassuring. Selegiline is a recently approved new drug with limited marketing experience. In view of the potentially fatal outcome of an interaction between MAOI drugs and dextromethorphan and the limited data base for selegiline, the agency believes that the potential for interaction should be assumed and that prudence is the wisest course until more information is available. Therefore, the agency is including the words "Parkinson's disease" in the precaution statement for products containing dextromethorphan or dextromethorphan hydrobromide when labeled for adults or for adults and children under 12 years of age. However, Parkinson's disease is not being included in the precaution statement on dextromethorphan-containing products labeled only for children under 12 years of age because it is not relevant to a pediatric population.

References

(1) Approved labeling for selegiline hydrochloride (Somerset), in OTC Vol. 04TFMA3, Docket No. 90N–0420, Dockets Management Branch.

(2) Blackwell, B., "Monoamine Oxidase Inhibitor Interactions with Other Drugs," *Journal of Clinical Psychopharmacology*, 11:55–59, 1991.

III. The Agency's Final Conclusions on the Drug Interaction Precaution Statement

The agency concludes that a drug interaction precaution statement for OTC dextromethorphan-containing drug products is needed to inform consumers of the potential interaction with various MAOI drugs. To be fully informative to consumers, this statement should contain both the technical and abbreviated terms for monoamine oxidase inhibitor (MAOI), should include likely medical uses for the MAOI drugs, should mention a 2-week washout period, and should include the statement to consult a health professional if uncertainty about the MAOI drug exists. Accordingly, the agency is amending § 341.74 by adding new § 341.74(c)(4)(v) to read: "*For products containing dextromethorphan or dextromethorphan hydrobromide as identified in § 341.14(a)(3) and (a)(4) when labeled for adults or for adults and children under 12 years of age. Drug Interaction Precaution.* Do not use this product if you are now taking a prescription monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), or for 2 weeks after stopping the MAOI drug. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product." The agency is also adding new § 341.74(c)(4)(vi) to read: "*For products containing dextromethorphan or dextromethorphan hydrobromide as identified in § 341.14(a)(3) and (a)(4) when labeled only for children under 12 years of age. Drug Interaction Precaution.* Do not give this product to a child who is now taking a prescription monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions), or for 2 weeks after stopping the MAOI drug. If you are uncertain whether your child's prescription drug contains an MAOI, consult a health professional before giving this product."

IV. Economic Impact

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking. The agency has examined the economic

consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC antitussive drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC antitussive drug products is not expected to pose such an impact on small businesses. This final rule imposes one-time costs associated with changing product labeling to include the MAOI-dextromethorphan drug interaction precaution statement. In the proposed rule (57 FR 27666 at 27669), the agency encouraged manufacturers of OTC antitussive drug products to voluntarily implement this labeling as of the date of publication of the proposal, subject to the possibility that FDA may change the wording of the drug interaction precaution as a result of comments filed in response to the proposal. Because the agency encouraged voluntary implementation of the proposed drug interaction precaution statement, manufacturers were advised that they would be given ample time after publication of the final rule to use up any labeling implemented in conformance with the proposal. Any manufacturer that voluntarily implemented labeling in conformance with the proposal and that now needs more than 12 months to use up that labeling should contact the Division of Drug Labeling Compliance (HFD–310), Office of Compliance, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 341

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 341 is amended as follows:

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 341.74 is amended by adding new paragraphs (c)(4)(v) and (c)(4)(vi) to read as follows:

§ 341.74 Labeling of antitussive drug products.

* * * * *

(c) * * *

(4) * * *

(v) *For products containing dextromethorphan or dextromethorphan hydrobromide as identified in § 341.14(a)(3) and (a)(4) when labeled for adults or for adults and children under 12 years of age. "Drug interaction precaution.* Do not use this product if you are now taking a prescription monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), or for 2 weeks after stopping the MAOI drug. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product."

(vi) *For products containing dextromethorphan or dextromethorphan hydrobromide as identified in § 341.14(a)(3) and (a)(4) when labeled only for children under 12 years of age. "Drug interaction precaution.* Do not give this product to a child who is taking a prescription monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions), or for 2 weeks after stopping the MAOI drug. If you are uncertain whether your child's prescription drug contains an MAOI, consult a health professional before giving this product."

* * * * *

Dated: August 17, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–25674 Filed 10–19–93; 8:45 am]

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federal register

Wednesday
October 20, 1993

Part VII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 341

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph for OTC Bronchodilator Drug Products

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 91N-0323]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph for OTC Bronchodilator Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the final monograph for over-the-counter (OTC) bronchodilator drug products to modify the drug interaction precaution statement required in the labeling of OTC bronchodilator drug products containing sympathomimetic amine drugs. These drug products should not be used by persons who are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI), without first consulting a health professional. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: October 20, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION

I. Background

In the Federal Register of September 9, 1976 (41 FR 38312), FDA published an advance notice of proposed rulemaking for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products. The Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (the Panel) recommended the following warning statement for the labeling of OTC bronchodilator drug products: "*Drug Interaction Precaution.* Do not take this product if you are presently taking a prescription antihypertensive or antidepressant drug containing a monoamine oxidase inhibitor." The warning was based on data showing marked and potentially dangerous increases in blood pressure in patients taking MAOI drugs and sympathomimetic amine bronchodilator drugs (41 FR 38312 at 38370 through 38373).

The agency discussed this statement in the tentative final monograph for OTC bronchodilator drug products (47 FR 47520 at 47523, October 26, 1982). In response to the Panel's recommendation, one comment contended that terms such as "antihypertensive," "antidepressant," and "monoamine oxidase inhibitor" are highly technical; that only a small percentage of the population is likely to understand this warning; and that including such a warning in the labeling of an OTC drug is contrary to the well-established principle that unnecessary or confusing precautions tend to dilute the significance of all instructions in the labeling and, hence, should be avoided (47 FR 47520 at 47523).

The agency acknowledged that the Panel's proposed drug interaction precaution might not be readily understood by all consumers. However, the agency considered a statement of this type to be necessary to alert consumers because antihypertensive and antidepressant drugs are widely prescribed. The agency proposed to simplify the precaution by substituting the term "high blood pressure" for "antihypertensive," and the term "depression" for "antidepressant." The agency also believed that the words "monoamine oxidase inhibitor" would be confusing to consumers and were not needed in the precautionary statement to convey the intended message. Accordingly, the agency proposed the following: "*Drug interaction precaution.* Do not take this product if you are presently taking a prescription drug for high blood pressure or depression, without first consulting your doctor." (See proposed § 341.76(c)(3) at 47 FR 47527.) In the final monograph for OTC bronchodilator drug products, published in the Federal Register of October 2, 1986 (51 FR 35326 at 35338), the agency substituted the word "use" for the word "take," because "use" can apply to both inhalation and oral dosage forms. This statement appears in § 341.76(c)(4) of the final monograph.

In the Federal Register of June 19, 1992 (57 FR 27662), FDA published a notice of proposed rulemaking to amend the final monograph for OTC bronchodilator drug products to revise the drug interaction precaution to read: "*Drug interaction precaution.* Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product." The agency invited written comments by August 18, 1992, on the specific wording of the warning, and the best way to convey this information to persons who are taking MAOI drugs.

In the Federal Register of August 6, 1992 (57 FR 34733), the agency extended the comment period to October 5, 1992, to obtain additional comments on whether the drug interaction precaution statement should be expanded to include MAO B drugs, such as selegiline. The agency asked whether the proposed drug interaction statement should be expanded to read: "*Drug interaction precaution.* Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product." The agency invited comments and information on interactions between selegiline and sympathomimetic amines and asked whether, from a public health perspective, it would be appropriate to expand the bronchodilator drug interaction precaution, as indicated.

Elsewhere in this issue of the Federal Register, the agency is amending the final monograph for OTC antitussive drug products so that the MAOI drug interaction precautions are consistent for OTC bronchodilator and antitussive products. In a future issue of the Federal Register, the agency intends to include the same drug interaction precautions in the final rule for OTC nasal decongestant drug products. These statements will apply to oral nasal decongestants containing sympathomimetic amine drugs.

In response to the proposed rule, the agency received comments from one physician, one drug manufacturer, and one drug manufacturers' association. Copies of the comments are on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. The primary focus of the comments is alternative wording for the new drug interaction precaution statement.

II. The Agency's Conclusions on the Comments

1. One comment stated that the agency's proposal was thorough, contained an excellent review of the existing medical knowledge, and shows

that there is a significant body of information to support the drug interaction precaution. The comment suggested that the drug interaction precautions for OTC antitussive, bronchodilator, and nasal decongestant drug products be consistent because the three groups are quite similar.

The agency agrees that the warning for OTC antitussive, bronchodilator, and oral nasal decongestant drug products should be consistent. Precautions for antitussive and bronchodilator drug products are addressed in this issue of the **Federal Register**. The same drug interaction precautions will be included in the final monograph for OTC nasal decongestant drug products in a future issue of the **Federal Register**.

2. One comment was submitted only to the proposed rule for OTC antitussive drug products (Docket No. 90N–0420), but is being discussed here because it pertains to the wording of the drug interaction precaution statement. Based on experience with labeling used on its own dextromethorphan-containing products, the comment suggested the following wording: "*Drug Interaction Precaution:* Do not take this product if you are presently taking a prescription monoamine oxidase inhibitor without first consulting your physician." For products labeled only for children under 12 years of age, the comment suggested: "*Drug Interaction Precaution:* Do not give this product to a child who is presently taking a prescription monoamine oxidase inhibitor without first consulting your child's physician." The comment stated that professional labeling for its dextromethorphan-containing drug products has included an MAOI interaction statement since 1977. The comment added that consumer labeling for its OTC drug product containing dextromethorphan and guaifenesin once used the statement: "*Drug Interaction Precaution:* Do not take this product if you are presently taking a prescription drug for high blood pressure or depression without first consulting your doctor." The same statement was proposed in the tentative final monograph for OTC bronchodilator drug products (47 FR 47520 at 47527) and the tentative final monograph for OTC nasal decongestant drug products (50 FR 2220 at 2239, January 15, 1985). The comment complained that this language appeared to cause confusion among health professionals and consumers, so it was subsequently modified to read: "*Drug Interaction Precaution:* Do not take this product if you are presently taking a prescription monoamine oxidase inhibitor without first consulting your physician." The comment stated that this newer language has provided a clear, succinct message to consumers, physicians, and other health professionals. The comment added that when MAOI drugs are prescribed, patients are fully informed about all necessary precautions and are provided with informational brochures on the many foods and drugs with known MAOI interactions.

The agency disagrees that the comment's suggested wording adequately conveys all information necessary for consumers to make an appropriate decision regarding use of the OTC drug product. Specifically, the suggested wording does not include an abbreviated name for monoamine oxidase inhibitor, the likely medical uses for the MAOI, or provide for consultation with health professionals other than doctors. The agency acknowledges that this additional information lengthens the precaution. However, the serious nature of the adverse reactions requires that people taking MAOI drugs should be given as much information as possible, so that they can make the correct decision about the use of the OTC drug product. The term "monoamine oxidase inhibitor" alone is technical and may not be as easily remembered as the shorter term "MAOI." Accordingly, the agency believes that both terms should be used. Some consumers may remember one term, while other consumers may remember the other term. Having both terms in the precaution helps ensure greater recognition among more consumers. Also, those consumers who do not recognize either term may at least recognize that their prescription drug is for one of the indications listed. Hopefully, such persons will consult their doctor or other health professional before taking the OTC drug product. The agency acknowledges that when MAOI drugs are prescribed, patients should be fully informed of the precautions and interactions associated with the drug. However, the agency is concerned that some patients may not be fully informed about the MAOI drug, may not fully understand or remember all the information given them or, with the passage of time, may forget or lose information that has been provided. The agency believes the OTC drug product labeling should be as informative as possible and should reinforce the MAOI prescribing information. Accordingly, the comment's suggested language is not adopted.

3. One comment suggested deleting the statement "If you are uncertain whether your prescription drug contains an MAOI, consult a health professional." The comment stated that a general informational statement urging consumers to use common sense should not be a part of the drug interaction precaution. The comment argued that the statement adds lengthy wording to already crowded labeling, is inappropriately placed as part of a specific warning, is redundant in the contexts of available patient education and of the common sense consumers apply to self-medication practice, and is not supported by adequate documentation or recommendations of the Panel.

The agency disagrees with the comment. The agency included this statement out of concern for consumers who may not understand the technical terms used in the precaution, may not remember whether their prescription drug is an MAOI, or may not retain the informational brochures received when the MAOI drug was prescribed. The agency is also concerned that some consumers who wish to use an OTC drug product may not want to bother their doctor with questions about their medication. Because of the possible severity of the adverse reactions, the agency believes it is important to tell consumers that if there is any uncertainty or doubt about using the OTC drug product, a health professional should be consulted. It is also important to remind consumers who may be reluctant to ask their doctor that other health professionals, such as pharmacists or nurses, can be alternative sources of information. The agency does not believe that label space should limit essential safety information. There are means available to extend label space, such as carton flaps or package inserts. Finally, the wording in this statement is similar to other labeling that the Panel proposed for oral nasal decongestant drug products ("except under the advice and supervision of a physician," 41 FR 38312 at 38423), and to language in the final monograph for OTC bronchodilator drug products ("without first consulting your doctor," § 341.76(c)(4)).

4. One comment urged the agency to include only those aspects of prescription labeling that are formally approved indications. The comment stated that the approved indication for MAOI drugs is depression, and the precaution statement should explicitly reference "depression" and not include overly broad references to unapproved uses, e.g., "emotional disturbances." The comment stated that it is commonplace for prescription drugs, approved for one or more conditions, to be used experimentally in private practice or in formal clinical trials to

treat conditions that do not appear in the approved prescription labeling. The comment asserted, however, that the establishment of OTC drug labeling that would accommodate ever-changing unapproved uses of the prescription drug would abuse the OTC drug product labeling. The comment suggested other approaches, such as notification of physicians and pharmacists by direct mail or through medical publications, press releases, prescription labeling, and professional organizations.

The parenthetical information, "certain drugs for depression or psychiatric or emotional conditions," was intended to alert consumers who may be taking a MAOI drug for a condition other than depression or a condition not readily identified with the term depression, such as anxiety or phobia. The agency noted in the proposal (57 FR 27662) that these uses are described in the scientific literature. In addition, the prescribing information for one MAOI, phenelzine sulfate, states the following: "[Phenelzine sulfate] has been found to be effective in depressed patients clinically characterized as 'atypical,' 'nonendogenous,' or 'neurotic.' These patients often have mixed anxiety and depression and phobic or hypochondriacal features." (Ref. 1). Because people are currently being prescribed MAOI drugs for conditions other than depression, the agency believes that these uses cannot be ignored. Consumers who take the drug for one of these other conditions need to be informed. Further, the language adopted will accommodate a certain amount of increased use of MAOI drugs, as described in the scientific literature, without the need to revise the OTC drug product labeling to cover such uses. The agency does not consider the other approaches suggested by the comment to be adequate because they target the health care professional rather than the consumer. While all of those approaches can and should be used, the consumer must be informed. Therefore, the agency is not adopting the comment's suggestions.

Reference

(1) Approved labeling for phenelzine sulfate (Parke-Davis), in OTC Vol. 04BFMA2, Docket No. 91N-0323, Dockets Management Branch.

5. One comment suggested that the precaution statement include a 2-week washout period to help ensure that patients will not discontinue the use of the MAOI in order to use the OTC drug. The comment proposed the following wording: "Do not use this product if you are presently taking a prescription monoamine oxidase inhibitor (MAOI) for depression or for 2 weeks after stopping use of a MAOI without first consulting your doctor." The comment stated that the suggested 2-week washout period was based on scientific data, and provided references and studies in support.

One reference provided by the comment stated that the MAOI drugs used clinically in the United States are irreversible enzyme inhibitors, that return of monoamine oxidase activity following administration of an irreversible MAOI is presumably dependent upon enzyme synthesis, and that recovery of monoamine oxidase activity after irreversible inhibition may require up to 2 weeks following withdrawal of the MAOI drug (Ref. 1). Two studies submitted by the comment suggest that the rate of recovery of monoamine oxidase activity may be organ-specific and also possibly influenced by body weight and age (Refs. 2 and 3). In a study with normal volunteers, the apparent half-lives of plasma MAO and platelet MAO were determined to be 2 to 3 days and 9 days, respectively (Ref. 4). In a study of the interaction between sympathomimetic amines (phenylephrine, ephedrine, and noradrenaline) and MAOI's in normal volunteers, results showed a rise in blood pressure from phenylephrine and ephedrine during MAOI administration and for up to 14 days after discontinuation of the MAOI (Ref. 5).

The agency has reviewed the studies and information submitted by the comment and agrees that it is important to include a 2-week washout period in the precaution statement. The prescribing information for MAOI drugs states that 10 to 14 days should elapse between discontinuation of an MAOI and initiation of treatment with certain other drugs, e.g., another antidepressant, another MAOI, or general anesthesia (Refs. 6, 7, and 8). The prescribing information for tranylcypromine sulfate, a partially reversible MAOI, states that monoamine oxidase activity is recovered in 3 to 5 days, and also recommends a 10-day withdrawal period between treatments (Ref. 8).

The agency concludes that information about a withdrawal period is important, for several reasons: (1) It should discourage patients from stopping their MAOI medication to take an OTC cough-cold drug product, and (2) it will help ensure that if the MAOI medication is discontinued for any reason, the OTC drug product will not be used before all or most of the MAOI is no longer in the body. Therefore, the agency is adopting the comment's suggestion to include a 2-week washout period, but is modifying the wording slightly. The comment proposed, "* * * if you are presently taking * * *," which the agency is shortening to "* * * if you are now taking * * *."

References

(1) Baldessarini, R.J., "Drugs and the Treatment of Psychiatric Disorders," in "Goodman and Gilman's The Pharmacological Basis of Therapeutics," 8th ed., edited by A.G. Gilman et al., Macmillan Publishing Co., New York, pp. 414–419, 1990.

(2) Della Corte, L., and B.A. Callingham, "The Influence of Age and Adrenalectomy on Rat Heart Monoamine Oxidase," *Biochemical Pharmacology*, 26:407–415, 1977.

(3) Planz, G., K. Quiring, and D. Palm, "Rates of Recovery of Irreversibly Inhibited Monoamine Oxidases: A Measure of Enzyme Protein Turnover," *Naunyn-Schmiedeberg's Archives of Pharmacology*, 273:27–42, 1972.

(4) Palm, D. et al., "Quantitation of Irreversible Inhibition of Monoamine Oxidase in Man," *European Journal of Clinical Pharmacology*, 3:82–92, 1971.

(5) Elis, J. et al., "Modification by Monoamine Oxidase Inhibitors of the Effect of Some Sympathomimetics on Blood Pressure," *British Medical Journal*, 2:75–78, 1967.

(6) Approved labeling for phenelzine sulfate (Parke-Davis), in OTC Vol. 04BFMA2, Docket No. 91N-0323, Dockets Management Branch.

(7) Approved labeling for isocarboxazid (Roche), in OTC Vol. 04BFMA2, Docket No. 91N-0323, Dockets Management Branch.

(8) Approved labeling for tranylcypromine sulfate (SmithKline Beecham), in OTC Vol. 04BFMA2, Docket No. 91N-0323, Dockets Management Branch.

6. Two comments discussed possible interactions between MAO B inhibitors, such as selegiline, and OTC drug products containing dextromethorphan or sympathomimetic amines. One comment stated that it had reviewed all spontaneous reports of adverse drug experiences with its MAO B inhibitor drug product containing selegiline, as monitored in accordance with 21 CFR 314.80. The comment found no mention of a suspected drug interaction with, or concomitant use of, an OTC drug product containing dextromethorphan or sympathomimetic amines. The other comment urged the agency to limit drug interaction precautions to those that have been shown to be of significant, practical, and likely importance. Specifically, the comment stated that in the case of the selective MAOI selegiline, the approved indication is Parkinson's disease, but that disease should not be included in the OTC drug product precaution statement because the prescription package insert for selegiline explicitly states that drug-drug interactions are not likely to occur between selegiline and OTC drugs.

The agency disagrees with the comment's interpretation of the package insert for selegiline. The insert (Ref. 1) states the following:

In theory, therefore, because MAO A of the gut is not inhibited, patients treated with selegiline at a dose of 10 milligrams (mg) a day can take medications containing pharmacologically active amines and consume tyramine-containing foods without risk of uncontrolled hypertension. To date, clinical experience appears to confirm this prediction; cheese reactions have not been reported in selegiline treated patients. The pathophysiology of the "cheese reaction" is complicated and, in addition to its ability to inhibit MAO B selectively, selegiline's apparent freedom from this reaction has been attributed to an ability to prevent tyramine and other indirect acting sympathomimetics from displacing norepinephrine from adrenergic neurons. However, until the pathophysiology of the cheese reaction is more completely understood, it seems prudent to assume that selegiline can only be used safely without dietary restrictions at doses where it presumably selectively inhibits MAO B (e.g., 10 mg/day). In short, attention to the dose dependent nature of selegiline's selectivity is critical if it is to be used without elaborate restrictions being placed on diet and concomitant drug use.

The insert for selegiline further states:

Since the selective inhibition of MAO B by selegiline hydrochloride is achieved only at doses in the range recommended for the treatment of Parkinson's disease (e.g., 10 mg/day), overdoses are likely to cause significant inhibition of both MAO A and MAO B. Consequently, the signs and symptoms of overdose may resemble those observed with marketed nonselective MAO inhibitors (e.g., tranylcypromine, isocarboxazid, and phenelzine).

The agency is aware that Blackwell has reported that, while selegiline at low dosage inhibits only MAO B, at antidepressant dosages (over 20 mg daily) the drug loses its specificity and hypertensive reactions begin to occur (Ref. 2).

The insert also describes interactions between selegiline and meperidine, which is typical of the interaction of meperidine with other MAOI drugs. The drug interaction section of the insert states: "No interactions attributed to the combined use of selegiline and other drugs have been reported. However, because the data base of documented clinical experience is limited, the level of reassurance provided by this lack of adverse reporting is uncertain."

The loss of selectivity at doses higher than 10 mg per day raises concerns that drug interactions may occur. Further, the agency does not find the lack of adverse reaction reports for selegiline to be reassuring. Selegiline is a recently approved new drug with limited marketing experience. In view of the potentially fatal outcome of an interaction between MAOI drugs and sympathomimetic amines and the limited data base for selegiline, the agency believes that the potential for interaction should be assumed and that prudence is the wisest course until more information is available. Therefore, the agency is including the words "Parkinson's disease" in the precaution statement.

References

(1) Approved labeling for selegiline hydrochloride (Somerset), in OTC Vol. 04BFMA2, Docket No. 91N–0323, Dockets Management Branch.

(2) Blackwell, B., "Monoamine Oxidase Inhibitor Interactions with Other Drugs," Journal of Clinical Psychopharmacology, 11:55–59, 1991.

III. The Agency's Final Conclusions on the Drug Interaction Precaution Statement

The agency concludes that a revised drug interaction precaution statement for OTC bronchodilator drug products is needed to better inform consumers of the potential interaction with various MAOI drugs. To be fully informative to consumers, this statement should contain both the technical and abbreviated terms for monoamine oxidase inhibitor (MAOI), should include likely medical uses for the MAOI drugs, should mention a 2-week washout period, and should include the statement to consult a health professional if uncertainty about the MAOI drug exists. Accordingly, the agency is amending § 341.76(c)(4) to read: "*Drug Interaction Precaution.* Do not use this product if you are now taking a prescription monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), or for 2 weeks after stopping the MAOI drug. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product."

IV. Economic Impact

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking. The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC bronchodilator drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC bronchodilator drug products is not expected to pose such an impact on small businesses. This final rule imposes one-time costs associated with changing product labels to include the MAOI-bronchodilator interaction precaution statement. In the proposed rule (57 FR 27662 at 27663), the agency encouraged manufacturers of OTC bronchodilator drug products to voluntarily implement this labeling as of the date of publication of the proposal, subject to the possibility that FDA may change the wording of the drug interaction precaution as a result of comments filed in response to the proposal. Because the agency encouraged voluntary implementation of the revised drug interaction precaution statement, manufacturers were advised that they would be given ample time after publication of the final rule to use up any labeling implemented in conformance with the proposal. Any manufacturer that voluntarily implemented labeling in conformance with the proposal and that now needs more than 12 months to use up that labeling should contact the Division of Drug Labeling Compliance (HFD–310), Office of Compliance, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 341

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 341 is amended as follows:

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 341.76 is amended by revising paragraph (c)(4) to read as follows:

§ 341.76 Labeling of bronchodilator drug products.

* * * * *

(c) * * *

(4) "*Drug interaction precaution.* Do not use this product if you are now taking a prescription monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), or for 2 weeks after stopping the MAOI drug. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product."

* * * * *

Dated: August 17, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-25675 Filed 10-19-93; 8:45 am]

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October 20, 1993

Part VIII

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 203 and 291
Single Family Property Disposition Program; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 203 and 291

[Docket No. R-93-1670; FR-3253-I-01]

RIN 2502-AF75

Single Family Property Disposition Program

AGENCY: Office of the Secretary, HUD.
ACTION: Interim rule.

SUMMARY: This rule amends the regulations at 24 CFR part 291 governing the Single Family Property Disposition program to change the existing policy on the maximum closing costs HUD will pay, discounts off list price in direct sales to governmental entities and non-profit organizations, extensions to the contract closing time, return of earnest money deposits, and priority to owner-occupant purchasers. The rule announces the availability of purchase money mortgages for nonprofit organizations and governmental entities purchasing properties for use in programs that promote affordable homeownership. The rule also includes changes to the occupied conveyance regulations in 24 CFR part 203 to allow conveyance of occupied property where the high cost of eviction or relocation expenses makes eviction impractical.

DATES: Effective date: November 19, 1993.
Comment due date: December 20, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Falkenstein, Jr., Acting Director, Single Family Property Disposition, room 9172, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500; telephone (202) 708-0740; TDD for hearing- and speech-impaired (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The changes in this rule do not affect the information collection requirements for the Single Family Property Disposition program, which were previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act and assigned OMB control numbers 2502-0306.

I. Background

Title II of the National Housing Act (the Act) authorizes HUD to insure mortgages for single family residences through the Federal Housing Administration (FHA) single family mortgage insurance program. The disposition program for single family properties, acquired by HUD in exchange for payment of insurance claims, is authorized by section 204(g) of the Act. On September 16, 1991 (56 FR 46964), the Department published a final rule describing the standards and procedures under which HUD operates the disposition program. The rule is codified at 24 CFR part 291.

Today's rule amends certain provisions of part 291 to allow for greater flexibility in fluctuating market situations and to provide greater opportunities for affordable housing to families and to State and local governments or nonprofit organizations serving low- and moderate-income families. The Department believes these amendments are necessary to implement its policy of revitalizing neighborhoods and communities. In a statement on April 28, 1993, before the Senate Committee on Banking, Housing and Urban Affairs on the anniversary of the Los Angeles riots, HUD Secretary Cisneros emphasized the need to find ways to bring economic lift to poor urban areas and to build a spirit of community within cities across racial and ethnic lines. The Secretary stated that many urban areas are "communities in peril," and that it is time to "pay attention now or pay for problems later in our country's life." The Single Family Property Disposition program is being amended to help make affordable housing a reality for more families everywhere and to help revitalize "communities in peril."

In accordance with its own regulations on rulemaking in 24 CFR part 10, the Department generally publishes a rule for public comment before issuing a rule for effect, unless to do so would be impracticable, unnecessary, or contrary to the public interest. This rule is being published for effect, with the public invited to submit comments that will be taken into consideration in developing a final rule, because the Department believes that delaying implementation of these policies in the urban areas targeted would be contrary to the public interest.

II. Amendments

Single Family Property Disposition (24 CFR Part 291)

The purpose of the property disposition program, which is set out at 24 CFR 291.1(a), is being changed to place greater emphasis on homeownership and improvement of neighborhoods. The amendment provides that the primary objective of the program is to reduce the inventory of acquired properties in a manner that expands homeownership opportunities, strengthens neighborhoods and communities, and ensures a maximum return to the mortgage insurance fund.

This rule contains several amendments that pertain to "revitalization areas," which the rule defines in § 291.5 as urban neighborhoods that are targeted by a city for coordinating affordable housing programs and enhanced supportive services, and where a significant number of HUD-owned properties have been in inventory at least six months. Alternatively, HUD may also target areas as revitalization areas where it has a significant concentration of properties that have been in its inventory for at least six months, whether or not the area has been targeted by a city.

Section 291.100(d) of the rule provides that, in a revitalization area, purchase money mortgages (PMMs) will be available for 85 percent of the purchase price, at current market interest rates, for a period not to exceed five years. The Department will take back PMMs from direct sale purchasers (*i.e.*, governmental entities and private nonprofit organizations) that meet FHA mortgage credit standards and that purchase properties for ultimate resale to owner-occupant purchasers at or below 115 percent of median income.

The Department recognizes that in promulgating the final rule for the Single Family Disposition Program, public commenters urged the use of PMMs as a financing tool for sales to individuals. The Department, while sympathetic to the difficulty of low-income purchasers in obtaining financing, noted in the preamble to the final rule (56 FR 46964, September 16, 1991) that it had determined that "the staff and monetary costs associated with originating and servicing PMMs, combined with the projected losses to the mortgage insurance funds resulting from anticipated high PMM default and foreclosure rates, make the issuance of PMMs prohibitive." This determination is not applicable to this interim rule in

which PMMs will be permitted for purchases by governmental and nonprofit entities. The governmental and nonprofit entities must meet FHA credit standards, and the term of the mortgage will be, as discussed above, for no more than five years, rather than the usual thirty-year term. The Department anticipates that the PMMs will be paid in full in less than five years when the governmental or nonprofit entity sells the property to a qualified individual purchaser. With these safeguards in place, the Department will not encounter the costs of continued servicing, defaults, and foreclosures that it did when it used PMMs to sell acquired properties to individuals. Thus, the Department has determined that the risks to the insurance funds, and the ancillary costs, will be negligible.

Section 291.105(a) is being amended to provide that owner-occupant purchasers will be given a priority in the competitive bid sales method. (The definition of owner-occupant purchaser is being amended to limit it to purchasers who intend to occupy the property as their primary residence. Governmental entities and private nonprofit organizations that purchase properties for use in affordable housing programs are included in a new category of purchaser—direct sale purchaser—added in this rule.) In revitalization areas, the priority for owner-occupant purchasers will be available for up to 30 days and only for properties offered with FHA mortgage insurance. In all other areas, the priority will be available for all properties for a period of time to be set by the Field Office, depending on local circumstances.

The existing rule at 24 CFR 291.105(b) provides that HUD will pay the financing and closing costs in an amount requested by the purchaser up to 6 percent of the purchase price. This rule removes the 6 percent limitation, and provides that the Secretary will determine the maximum limit appropriate for the area. HUD's experience with the program has shown that the amount of closing costs a seller pays fluctuates with market conditions and by geographic area. The removal of the limitation will allow for more flexibility to adjust the amount according to local circumstances. No change is being made with regard to brokers' fees.

The rule also amends § 291.110(a) to allow the discount on direct sale purchases to be determined by the Secretary as appropriate, but not less than 10 percent. The amount of the discount may vary, depending on the location of the property or the number of properties purchased in a single transaction. This change will help organizations who purchase properties for use in homeownership programs, as well as for affordable rental housing and housing for the homeless. A similar change is being made to § 291.110(b) with regard to direct sales to displaced persons who will occupy the property.

Section 291.110(a) is also being amended to set out the procedure by which potential purchasers under the direct sales programs are notified of eligible properties.

The rule also amends § 291.110 to allow for a direct sale to an individual or other entity not otherwise specified in § 291.110. From time to time, situations have arisen in which the Department has deemed it desirable to sell a property directly to an individual (*e.g.*, when a sale failed due to the fault of HUD) but, because the individual did not meet the criteria set out in § 291.110 for direct sales, was unable to do so. Therefore, the rule will provide that authority if a finding is made, in writing, that such a sale would further the goals of the National Housing Act and would be in the best interests of the Secretary.

Section 291.130, Closing, is being amended with regard to extensions of scheduled closings of sales. Under § 291.130(b), 15-day extensions are granted where a scheduled closing cannot be met for reasons beyond the control of the purchaser and HUD has reason to believe that the sale will close within a reasonable time. The rule currently provides that a request for an extension must be accompanied by a non-refundable fee in an amount from $10 to $25 a day. Experience has shown that extensions are often necessary through no fault of the purchaser, and that the policy in many instances works an unnecessary hardship on owner-occupant buyers. Therefore, to provide a measure of relief to its purchasers, while at the same time not unduly penalizing HUD for the delay (since it is the buyer's responsibility to select the funding lender), § 291.130(b) is being amended to permit the initial 15-day extension at no cost to owner-occupant purchasers where documentation indicates that (1) proper and timely loan application was made, (2) the delay is not the fault of the buyer, and (3) mortgage approval is imminent. In addition, this section is being amended to allow extensions at no cost, at any time and to any purchaser, where the delay is the fault of HUD or a direct endorsement lender. Delays of this nature are most commonly associated with the closing of sales involving Section 203(k) financing.

Finally, § 291.135, Forfeiture of earnest money deposits, is being amended with regard to return of earnest money deposits to owner-occupants and direct sale purchasers. The current rule provides that, in the case of insured sales, 100 percent of the earnest money deposit will be returned to an owner-occupant purchaser where HUD (or a Direct Endorsement lender using HUD guidelines) determines that the purchaser is not an acceptable borrower. The amendment provides that, in the case of an uninsured sale, 100 percent of the earnest money deposit made by an owner-occupant purchaser will be returned where the purchaser is pre-approved for mortgage financing in an appropriate amount by a recognized mortgage lender and, despite good faith efforts, is unable to obtain mortgage financing. Such situations may arise where, even though the purchaser has been approved for a loan, the lender will not accept a mortgage on the particular property being purchased. For uninsured sales, where an owner-occupant purchaser has not been preapproved and despite good faith efforts cannot obtain mortgage financing, 50 percent of the earnest money deposit would be returned. For purposes of this rule, "pre-approved" means a commitment has been obtained from a recognized mortgage lender for mortgage financing in a specified dollar amount sufficient to purchase the property. (This definition is being added to § 291.5.)

Occupied Conveyance (24 CFR Part 203)

One of the situations described in 24 CFR 203.670 when HUD will accept conveyance of occupied property for the Single Family Property Disposition program is when it is in the Secretary's interest, the property is habitable, and the remaining occupants meet certain eligibility criteria (§ 203.670(b)(3)). The criteria for determining the Secretary's interest are described in 24 CFR 203.671 as:

(1) Occupancy of the property is essential to protect it from vandalism from time of acquisition to preparation for sale;

(2) The average time in inventory for HUD's unsold inventory in the residential area in which the property is located exceeds six months; and

(3) With respect to multi-unit properties, the marketability of the property would be improved by retaining occupancy of one or more units.

Under the current rule, the Department has no authority to accept a property occupied to avoid the payment of excessive eviction or relocation

expenses required by a local government. These are not frequent occurrences, but these costs have to be paid by the mortgagee and reimbursed by the Department in the claim for insurance benefits. The Department believes that, in the interest of cost-effectiveness, the rule should allow for the acceptance of an occupied property, without requiring that all other eligibility criteria be met by the remaining occupants, where a state or local law requires the payment of high eviction costs or excessive relocation expenses as part of the eviction process. This amendment gives the Department the flexibility necessary to determine whether it is more advantageous to accept conveyance of the property occupied rather than incur the excessive costs that would be generated by an eviction. The occupied conveyance rule at 24 CFR 203.670 and 203.671 is being amended to implement this policy.

A technical correction is also being made to the occupied conveyance regulations at §§ 203.675(b)(4) and 203.676 to conform with an earlier amendment to the rule published on September 16, 1991 (56 FR 46964). That amendment added long-term or permanent illness or injury of an occupant, in addition to temporary illness or injury, as a criterion for accepting conveyance of an occupied property. Sections 203.675(b)(4) and 203.676 are being amended by this rule to conform those sections to the September 16, 1991 amendment.

II. Other Matters

Paperwork Reduction Act

The changes in this rule do not affect the information collection requirements for the Single Family Property Disposition program previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act and assigned OMB control numbers 2502–0306.

Executive Order 12291, Federal Regulation

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulation issued by President Ronald Reagan on February 17, 1981. An analysis of the rule indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(c) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule involves procedures for the sale of HUD-acquired single family homes, and will not affect the relationship between the Federal Government and State and local governments. Therefore, it is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule will not have a significant impact on the family formation, maintenance, and general well-being, and thus is not subject to review under the Order. The rule governs the procedures under which the Department sells acquired single family property. Any effect on the family would be indirect and insignificant.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities. The rule governs the procedures under which the Department sells acquired single family property.

Semiannual Agenda of Regulations

This rule was listed as item number 1460 in the Department's Semiannual Agenda of Regulations published at 58 FR 24382, 24413 on April 26, 1993, under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

23 CFR Part 203

Hawaiian Natives, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 291

Community facilities, Homeless, Surplus government property, Low and moderate income housing, Mortgages, Lead poisoning, Conflict of interests, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, title 24 of the Code of Federal Regulations is amended to read as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

2. Section 203.670 is amended by revising paragraph (b)(3) to read as follows:

§ 203.670 Conveyance of occupied property.

* * * * *

(b) * * *

(3) It is in the Secretary's interest to accept conveyance of the property occupied under § 203.671, the property is habitable as defined in § 203.673, and, except for conveyances under § 203.671(d), each occupant who intends to remain in the property after the conveyance meets the eligibility criteria in § 203.674(b).

* * * * *

3. Section 203.671 is amended by adding paragraph (d) as follows:

§ 203.671 Criteria for determining the Secretary's interest.

* * * * *

(d) The high cost of eviction or relocation expenses makes eviction impractical.

§ 203.675 [Amended]

4. Section 203.675(b)(4) is amended by removing the word "temporary" from the first sentence.

5. Section 203.676 is amended by removing the word "temporary" from the second sentence.

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

6. The authority citation for part 291 is revised to read as follows:

Authority: 12 U.S.C. 1709 and 1715(b); 42 U.S.C. 1441, 1551a, and 3535(d).

7. Section 291.1 is amended by revising paragraph (a) to read as follows:

§ 291.1 Purpose and scope.

(a) *Purpose.* (1) This part governs the disposition of one-to-four family properties that are acquired by HUD or are otherwise in HUD's custody. Detailed policies and procedures that must be followed in specific areas are issued by each HUD field office.

(2) The purpose of the property disposition program is to reduce the inventory of acquired properties in a manner that expands homeownership opportunities, strengthens neighborhoods and communities, and ensures a maximum return to the mortgage insurance fund.

* * * * *

8. Section 291.5 is amended by revising the definition of "Owner-occupant purchaser" and by adding definitions for "Direct sale purchaser", "Pre-approved", "Purchase money mortgage", and "Revitalization area", to read as follows:

§ 291.5 Definitions.

* * * * *

Direct sale purchaser means a State, governmental entity, tribe, or agency thereof; a private nonprofit organization as defined in § 291.405 of this part; tenants in occupancy who are offered the right of first refusal to purchase property under § 291.100(a)(4) of this part; displaced persons as described in § 291.110(b) of this part; and other individuals or entities as described in § 291.110(g) of this part. For purposes of this part, a State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States. Governmental entities include those with general governmental powers (*e.g.*, a city or county), as well as those with limited or special powers (*e.g.*, public housing agencies).

* * * * *

Owner-occupant purchaser means a purchaser who intends to use the property as his or her principal residence.

Pre-approved means a commitment has been obtained from a recognized mortgage lender for mortgage financing in a specified dollar amount sufficient to purchase the property.

Purchase money mortgage, or *PMM* means a note secured by a mortgage or trust deed given by a buyer, as mortgagor, to the seller, as mortgagee, as part of the purchase price of the real estate.

Revitalization area means an urban neighborhood that is targeted by a city for coordinating affordable housing programs and enhanced supportive services, and where a significant number of HUD-owned properties have been in inventory at least six months. Alternatively, HUD may target urban areas as revitalization areas where it has a significant concentration of properties that have been in inventory at least six months, whether or not targeted by a city.

* * * * *

9. In § 291.100, paragraphs (a)(5), (c), and (d) are revised to read as follows:

§ 291.100 General policy.

(a) * * *

(5) In accordance with § 291.410 of this part, eligible properties may be offered to providers of housing for the homeless before being offered for sale to the general public.

* * * * *

(c) *Method of sale.* (1) Properties are sold on an "as-is" basis, without repairs or warranties. The principal method of sale is the competitive sales procedure, as described in § 291.105 of this part. Where appropriate, the Secretary may utilize any of the other sales procedures described in § 291.110 of this part.

(2) Properties may be sold under the following programs:

(i) *Insured.* A property that HUD believes meets the intent of the Minimum Property Standards (MPS) for existing dwellings (*i.e.*, structurally sound, free of roof leaks, with operable mechanical system) will be offered for sale in "as-is" condition with mortgage insurance available, as described in § 291.115 of this part.

(ii) *Insured with repair escrow.* A property that requires no more than $5,000 for repairs to meet the intent of the MPS, as determined by the Secretary, will be offered for sale in "as-is" condition with mortgage insurance available, provided the mortgagor establishes a cash escrow to ensure the completion of the required repairs, as described in § 291.120.

(iii) *Uninsured.* A property that fails to qualify under either paragraph (c)(2)(i) or (ii) of this section will be offered for sale in "as-is" condition without mortgage insurance available, as described in § 291.125.

(d) *Financing.* (1) Except as provided in paragraph (d)(2) of this section, the purchaser is entirely responsible for obtaining financing for purchasing a property.

(2) In revitalization areas targeted either by HUD or by a city, HUD will take back purchase money mortgages (PMMs) on property purchased by governmental entity or private nonprofit organization direct sale purchasers who purchase property for ultimate resale to owner-occupant purchasers with incomes at or below 115 percent of the area median income. PMMs will be available for 85 percent of the purchase price, at market rate interest, for a period not to exceed five years. Mortgagors must meet FHA mortgage credit standards.

* * * * *

10. In § 291.105, paragraphs (a), (b)(1)(i) and the first sentence of paragraph (c) are revised to read as follows:

§ 291.105 Competitive sales procedure.

(a) *General.* (1) Properties are sold to the general public on a competitive bid basis through local real estate brokers. If a property fails to generate an acceptable bid or offer during the bidding period, it will remain on the market for an extended listing period, as described in paragraph (f) of this section.

(2) In areas designated as revitalization areas, priority will be given to owner-occupant purchasers for properties offered with FHA mortgage insurance for a period of up to 30 days. In all other areas, priority will be given to owner-occupant purchasers for a period of time to be set by the local Field Office, depending on circumstances in the areas.

(b) *Net offer.* (1)(i) If requested by the purchaser in the bid, HUD will pay all or a portion of the financing and loan closing costs and the broker's sales commission, not to exceed the percentage of the purchase price determined appropriate by the Secretary for the area. In no event will the amount for broker's sales commission exceed 6 percent of the purchase price, except for cash bonuses as described in paragraph (b)(1)(ii) of this section. * * *

(c) *Acceptable bid.* HUD will accept the bid producing the greatest acceptable net return to HUD and otherwise meeting the terms of HUD's offering of the property, with priority given to owner-occupant purchasers as described in paragraph (a)(2) of this section. * * *

* * * * *

11. Section 291.110 is amended by revising paragraphs (a) and (b)(1), and

by adding paragraph (g), to read as follows:

§ 291.110 Other sales procedures.

(a) *Direct sales to governmental entities and private nonprofit organizations.* (1) State and local governments, public agencies, and qualified private nonprofit organizations may purchase properties on a direct sale basis, at a discount off the list price determined by the Secretary to be appropriate, but not less than 10 percent, for use in HUD and local housing or homeless programs. The amount of the discount may vary, depending on the area or the number of properties purchased in a single transaction.

(2) (i) Direct sale purchasers, except tenants in occupancy and displacees, under paragraph (a)(1) of this section must designate geographical areas of interest, by ZIP code, to appropriate HUD Field Offices. Upon request, after properties have been offered for sale to owner-occupant purchasers and before they are listed for sale to the general public, Field Offices will notify direct sale purchasers in writing when eligible properties become available in the areas designated by the purchaser. Field Offices will coordinate the dissemination of the information to ensure that where more than one purchaser designate a specific area, those purchasers receive the list of properties at the same time, based on intervals agreed upon between HUD and the purchasers. Properties will be sold on a first come-first served basis.

(ii) Direct sale purchasers must notify HUD of preliminary interest in specific properties within five days of the notification of available properties (where notification is by mail, the five days will begin to run five days after mailing). Those properties in which purchasers express an interest will be held off the market for a ten-day consideration and inspection period. Other properties on the list will continue to be processed for public sale. HUD may limit the number of properties held off the market for a purchaser at any one time, based upon the purchaser's financial capacity as determined by HUD and upon past performance in HUD programs. At the end of the ten-day consideration and inspection period, properties in which no direct sale purchaser has expressed a specific intent to purchase will be offered for sale to the general public. Properties in which a direct sale purchaser expressed an intent to purchase, during the ten-day period, will continue to be held off the market pending receipt of the sales contract. If a sales contract is not received within a time period of up to ten days, as determined by HUD, following expiration of the ten-day consideration and inspection period, and no other direct sale purchaser has expressed an interest, then the property will be offered for sale to the general public.

(b) *Direct sales to displaced persons.* (1) At the discretion of the field office manager, properties eligible for insured financing are offered for direct sale, at a discount off the list price determined by the Secretary to be appropriate, but not less than 10 percent, to displaced persons who will occupy the properties. Properties offered will be only those in the general area in which the displacement is occurring.

* * * * *

(g) *Direct sales to other individuals or entities.* A direct sale may be made to an individual or entity that does not meet any of the categories specified in this section, if a finding is made by the Assistant Secretary for Housing-Federal Housing Commissioner or his or her designee in writing that such a sale would further the goals of the National Housing Act and would be in the best interests of the Secretary.

12. In § 291.130, paragraph (b)(2) is revised and paragraph (b)(3) is added to read as follows:

§ 291.130 Closing.

* * * * *

(b) *Extensions.* * * *

(2) A request for an extension must be in writing, accompanied by the non-refundable fee in an amount not less than $10 a day or more than $25 a day, except as provided in paragraph (b)(3) of this section. The amount charged by a field office depends on circumstances in the area, such as the average holding costs to HUD, the average sales price of properties, and the number of sales that fail to close. Extensions will be granted in 15-day increments only. If a closing occurs in fewer than 15 days, the purchaser credited for any unused portion of the extension fee.

(3) The initial 15-day extension will be provided to owner-occupant purchasers at no cost if documentation is provided indicating that proper and timely loan application was made, that the delayed closing is not the fault of the buyer, and that mortgage approval is imminent. An extension will be provided at any time and to any purchaser at no cost where the delay is the fault of HUD or a direct endorsement lender. In the case of a Section 203(k) loan, an extension of up to 30 days will be granted at no cost where documentation indicates the buyer is not the cause for the delay.

13. Section 291.135 is amended by redesignating paragraph (c)(1)(v) as paragraph (c)(1)(vi), by adding a new paragraph (c)(1)(v), by revising paragraph (c)(2), and by adding a new paragraph (d), to read as follows:

§ 291.135 Forfeiture of earnest money deposits.

* * * * *

(c) * * *

(1) * * *

(v) In the case of an uninsured sale, and the purchaser was pre-approved for mortgage financing in an appropriate amount by a recognized mortgage lender, where the purchaser is unable, despite good faith efforts, to obtain mortgage financing; or

(vi) * * *

(2) In those instances where the purchaser was not pre-approved for mortgage financing by a recognized mortgage lender, and despite good faith efforts by the purchaser there is an inability to obtain a mortgage loan from a recognized mortgage lender, 50 percent of the earnest money deposit will be returned.

(d) *Direct sale purchasers except tenants in occupancy or displacees.* (1) The entire earnest money deposit will be returned to a direct sale purchaser, except tenants in occupancy or displacees, who fails to close where, since the contract of sale was signed:

(i) In the case of an insured sale, HUD (or a Direct Endorsement lender using HUD guidelines) determines that the purchaser is not an acceptable borrower; or

(ii) For other good cause, as determined by the field office.

(2) Direct sale purchaser who are tenants in occupancy or displacees are subject to the earnest money forfeiture rules that apply to owner-occupant purchasers, as described in paragraph (c) of this section.

Dated: September 24, 1993.

Nicholas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93–25629 Filed 10–19–93; 8:45 am]

BILLING CODE 4210–32–M

federal register

Wednesday
October 20, 1993

Part IX

Department of Transportation

Federal Transit Administration

Recommended Fire Safety Practices for Transit Bus and Van Materials Selection; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket 90-A]

Recommended Fire Safety Practices for Transit Bus and Van Materials Selection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Transit Administration (FTA), after receiving comments on two previously published Notices, is revising its Recommended Fire Safety Practices for Transit Bus and Van Materials Selection guidelines. This Notice describes FTA's recommended procedure for testing the ability of foam materials to retain fire retardant chemicals after they have been exposed to water, discusses FTA's position on smoke emission performance criteria for seat cushions, and corrects a typographical error. These practices are recommendations rather than requirements and are not binding on FTA's grantees, but do reflect FTA's interest in promoting safety issues.

DATES: Effective date: October 20, 1993.

FOR FURTHER INFORMATION CONTACT: For program issues: Judy Meade, Acting Deputy Director, or Roy Field, Transit Safety Specialist, both of the Office of Safety and Security, (202) 366-2896 (telephone) or (202) 366-3765 (fax).

SUPPLEMENTARY INFORMATION:

I. Overview

A. Introduction

In this Notice FTA makes one change in its "Recommendations for Testing the Flammability and Smoke Emission Characteristics of Transit Bus and Van Materials" (Recommended Practices), which are contained in Table 1 of this notice, and which previously have been published in the **Federal Register**. Specifically, FTA recommends the use of FED-STD-191A Test Method 5830 (191A) to test the ability of foam materials to retain fire retardant chemicals if, in the opinion of the grantee based on its own unique operating conditions, the foam materials will be exposed to water. This change is located in Note 3 to Table 1. FTA makes no other change in its Recommended Practices.

In addition, we discuss FTA's position concerning smoke emission performance criteria and toxicity requirements, and we clarify a typographical error that appeared in the Notice published on January 13, 1992.

B. Organization of the Notice

This Notice consists of five sections of text, the first four of which discuss, generally, the development of procedures used to test the flammability and smoke emission characteristics of certain materials, the issues raised in two previously published related Notices, the decisions made by the FTA in this Notice, and comments addressed to the January 13, 1992, Notice. Section V, Recommended Practices, consists of subsections entitled "Scope," "Application," and "Recommended Test Procedures and Performance Criteria," which together comprise FTA's "Recommended Practices for Testing the Flammability and Smoke Emission Characteristics of Transit Bus and Van Materials." The "Scope" subsection explains the reason for these recommendations, "Application" indicates the types of vehicles covered by the recommendations, and "Recommended Test Procedures and Performance Criteria" provides general directions for testing certain materials.

The most important part of this Notice, however, is contained in Table 1 and in the Notes following it. Table 1 contains the actual recommended test procedures for certain components of buses and vans, namely, seats, panels, floors, and insulating materials. (See Table 1). The Notes, labelled 1 through 9, modify or explain those specific testing procedures. This Notice concerns Note 3 in particular.

A list of defined terms and references also follows Table 1.

II. Background

A. The Test Procedures

FTA's Recommended Practices for transit bus and van materials are based on another set of FTA Recommended Practices, "Recommended Fire Safety Practices for Rail Transit Materials Selection" published in the **Federal Register** on August 14, 1984, at 49 FR 32482. Neither set of Recommended Practices is regulatory in nature. Rather, they are recommendations containing voluntary testing procedures (see Table 1 and accompanying Notes), which are intended to be used to assess the fire risk of certain materials. The testing procedures are small-scale laboratory tests designed by organizations such as the American Society for Testing Materials (ASTM) and the Federal Aviation Administration (FAA), and are used to determine how quickly certain materials will burn and the amount of smoke density the fire will produce. These laboratory tests do not duplicate actual fire conditions, but nevertheless have been proven to result in the selection of materials that reduce the threat of fire, thus reducing injuries and property damage resulting from fires. Similar guidelines have been published by the Federal Railroad Administration (FRA) for railroad passenger cars and by the National Fire Protection Association (NFPA) in its 130 Standard for Fixed Guideway Transit Systems.

B. Prior Notices

This Notice is the third that FTA has published about its Recommended Practices for bus and van materials, and responds to an issue that was raised in both of the previous Notices. In the first Notice, published in the **Federal Register** on July 2, 1990, at 55 FR 27402, (first Notice), FTA asked, in general, whether FTA's Recommended Practices for transit buses and vans should be modified. Several commenters suggested that we change the particular recommended procedure used to test whether water will dilute fire retardant chemicals from foam cushions. In response to these comments, in the Notice published in the **Federal Register** on January 13, 1992, at 57 FR 1360 (second Notice), FTA changed that particular test procedure—at Note 3 to Table 1—by deleting the words "if appropriate". Note 3 then read, "[t]he surface flammability and smoke emission characteristics of seat cushion materials should be demonstrated to be permanent by washing according to FED-STD-191A Textile Test Method 5830." Because 191A is designed for textiles and not for foams, the effect of the revision of Note 3 was to no longer recommend 191A for foam materials. In the second Notice FTA also specifically asked for comment about whether any existing test could be used in lieu of 191A for foam materials. In response to that request, FTA received ten comments in support of 191A and thirteen comments in support of ASTM-D-3574 Standard Methods of Testing Flexible Cellular Materials—Slab, Bonded, and Molded Urethane Foams Section J1 along with either Sections I2 or I3 (ASTM-D-3574). This Notice (third Notice) presents a summary of those comments, as well as FTA's decision concerning the use of a standard test for foam materials.

It is important to note that comments were received on other issues as well and those comments are also discussed and addressed below.

III. Discussion of FTA's Decision on the Recommended Test Procedures for Fire Retardants in Foam Materials

In response to comments received on the second notice, discussed below, FTA has made only one change to its

Recommended Practices, and that change concerns the test which should be used to test foam materials. Specifically, FTA has reinserted the words "if appropriate" into Note 3 of Table 1. Note 3 now reads "[t]he surface flammability and smoke emission characteristics of seat cushion materials should be demonstrated to be permanent by washing, if appropriate, according to FED–STD–191A Textile Test Method 5830." As indicated by the words "if appropriate," FTA now believes that 191A is a relevant selection criterion only for foam materials that, in the opinion of the grantee based on its own unique operating conditions, will be exposed to water.

We note that 191A is recommended by the Federal Railroad Administration and by the National Fire Protection Association in its 130 Fixed Guideway Transit Systems Standard.

The comments on 191A suggest a need for a standard test, representative of the transit environment, to determine the ability of foams to retain fire retardant chemicals if exposed to water. It is our understanding that the ASTM is in the process of developing a suitable test for the retention of fire retardant chemicals in foam materials. Should such a test be developed, the FTA will consider updating its Recommended Practices.

IV. Discussion of Comments

The FTA received thirty-six comments from twenty-nine respondents on the second Notice. Responding organizations included eight materials suppliers, four transit authorities, five seating manufacturers, seven bus manufacturers, a State railroad administration, two consultants, one transit industry organization, and three rubber companies. Although respondents could comment on any issue under the Recommended Practices, most of them focused on Note 3 to Table 1, which concerns the appropriate method for testing the ability of foam materials to retain fire retardant chemicals after they have been exposed to water. This test method is called, generically, a wash test.

A. Wash Test

In general, a wash test is designed to determine whether fire retardant chemicals are permanent, or whether water will dilute them from foam cushions. An important consideration in selecting a particular test is to match the characteristics of the test to the actual operating conditions of a particular transit system. Thirteen respondents recommended the ASTM–D–3574 in the belief that it most appropriately corresponded to the actual transit environment. Ten respondents believed otherwise and recommended 191A as the standard test.

The comments were about evenly divided because the respondents were uncertain about how much water is necessary to replicate transit operating conditions. Respondents who supported ASTM–D–3574, a steam autoclave test, claimed that 191A does not replicate the transit operating environment because they believe it is unnecessarily stringent, requiring a foam material to be soaked continuously for 24 hours in water that is changed every 15 minutes. Because most transit agencies cover their foam materials with nonporous vinyl, these respondents maintained that it is highly unlikely that foams used in transit buses and vans will ever be submerged in water to that extent. On the other hand, these respondents maintained, ASTM–D–3574 does replicate the actual operating conditions of transit buses and vans because it merely exposes the foam to water but does not submerge it in water.

In contrast, respondents who favored 191A maintained that its adoption was in the best interest of safety, precisely because it is so stringent. These respondents stated that transit systems often encounter situations in which cushions are soaked with water, for instance, when a bus window is left open in a rain storm, when a wet passenger sits down, or when a passenger spills a drink on a seat. Given these operating conditions, respondents favoring 191A believed that the steam autoclave test method used in ASTM–D–3574 did not adequately replicate transit operating conditions.

B. Smoke Emission Criteria for Seat Cushions

Seven respondents suggested changing the performance criteria (See Table 1) corresponding to the seat cushion category. These respondents wanted to make the seat cushion smoke emission criteria at four minutes more restrictive, changing it from 200 to 175. FTA decided that this change was unnecessary, because the 200-level criterion is consistent with the National Fire Prevention Association National Standard 130 (NFPA 130) as well as with FTA's Recommended Practices for Rail Transit Vehicles.

C. Toxicity Requirements

Two respondents expressed concern that the FTA was considering adding toxicity requirements to its Recommended Practices, and asked to be kept informed of any FTA activity in that direction. The FTA has taken no action to include toxicity in its Recommended Practices. Instead, FTA requested the National Research Council's (NRC) Transportation Research Board and Materials Advisory Board of the Commission on Engineering and Technical Systems to assist in addressing this issue. In response to this request, the NRC established a Committee on Toxicity Hazards of Materials Used in Rail Transit Vehicles. This committee, consisting of representatives of industry and academia, has reviewed the present state of knowledge concerning combustion toxicity, identifying specific toxicity hazards related to the use of polymeric materials in transit vehicles. A report, "Fires in Mass Transit Vehicles: Guidelines for the Evaluation of Toxic Hazards," was published on June 15, 1991, and reviews the test methods used to evaluate the toxicity of various construction materials for transit vehicles.

D. Carpet Critical Radiant Flux

One respondent noted an error in the Recommended Practices listed in Table 1 as published in the January 13, 1992, **Federal Register** Notice. The Carpet Critical Radiant Flux (C.R.F.) as measured in Test Procedure ASTM–E–648 should be ≥.5 watts per square centimeter, and not ≤.5 watts per square centimeter which appeared in the Notice. (When using ASTM–E–648, the greater the magnitude for C.R.F., the less flammable the material.) This error has been corrected in Table 1 accompanying this Notice.

V. Recommended Practices

A. Scope

The recommended Fire Safety Practices for Transit Bus and Van Materials Selection are directed at improving the selection practices for interior materials procured for new vehicles and the retrofit of existing vehicles. Adoption of these recommended fire safety practices will help to minimize the fire threat in these vehicles and, thereby, reduce the injuries and damage resulting from fires.

B. Application

This document provides recommended fire safety practices for testing the flammability and smoke emission characteristics of materials used in the construction of transit buses and vans. Vehicles considered as transit buses and vans are those used for urban, suburban, rural, and specialized transit services. Types covered by these

recommended practices are revenue (passenger carrying) vehicles that are placed in mass transit service by a recipient of Federal funds from the Federal Transit Administration. Some of the functions in the recommendations may not apply to all vehicles (e.g., not all vehicles have windscreens).

C. Recommended Test Procedures and Performance Criteria

(a) The materials used in transit buses and vans should be tested according to the procedures and performance criteria set forth in Table 1.

(b) Transit agencies should require certification that combustible materials to be used in the construction of vehicles have been tested by a recognized testing laboratory, and that the results are within the recommended limits.

BILLING CODE 4910-57-P

TABLE 1: RECOMMENDATIONS FOR TESTING THE FLAMMABILITY AND SMOKE EMISSION CHARACTERISTICS OF TRANSIT BUS AND VAN MATERIALS

Category	Function of Material	Test Procedure	Performance Criteria
Seating	Cushion[1;2;3;5;9*]	ASTM D-3675	$I_s \leq 25$
		ASTM E-662	$D_s(1.5) \leq 100; D_s(4.0) \leq 200$
	Frame[1;5;8]	ASTM E-162	$I_s \leq 35$
		ASTM E-662	$D_s(1.5) \leq 100; D_s(4.0) \leq 200$
	Shroud[1;5]	ASTM E-162	$I_s \leq 35$
		ASTM E-662	$D_s(1.5) \leq 100; D_s(4.0) \leq 200$
	Upholstery[1;3;4;5]	FAR 25.853 (Vertical)	Flame time $\leq$ 10 seconds; burn length $\leq$ 6 inches
		ASTM E-662	$D_s(4.0) \leq 250$ coated; $D_s(4.0) \leq 100$ uncoated
Panels	Wall[1;5]	ASTM E-162	$I_s \leq 35$
		ASTM E-662	$D_s(1.5) \leq 100; D_s(4.0) \leq 200$
	Ceiling[1;5]	ASTM E-162	$I_s \leq 35$
		ASTM E-662	$D_s(1.5) \leq 100; D_s(4.0) \leq 200$
	Partition[1;5]	ASTM E-162	$I_s \leq 35$
		ASTM E-662	$D_s(1.5) \leq 100; D_s(4.0) \leq 200$
	Windscreen[1;5]	ASTM E-162	$I_s \leq 35$
		ASTM E-662	$D_s(1.5) \leq 100; D_s(4.0) \leq 200$
	HVAC Ducting[1;5]	ASTM E-162	$I_s \leq 35$
		ASTM E-662	$D_s(4.0) \leq 100$
	Light Diffuser[5]	ASTM E-162	$I_s \leq 100$
		ASTM E-662	$D_s(1.5) \leq 100; D_s(4.0) \leq 200$
Flooring	Wheel Well and Structural[6]	ASTM E-119	Pass
	Carpeting[7]	ASTM E-648	C.R.F. ≥ 0.5 w/cm^2
Insulation	Thermal[1;3;5]	ASTM E-162	$I_s \leq 25$
		ASTM E-662	$D_s(4.0) \leq 100$
	Acoustic[1;3;5]	ASTM E-162	$I_s \leq 25$
		ASTM E-662	$D_s(4.0) \leq 100$
Miscellaneous	Firewall[6]	ASTM E-119	Pass
	Exterior Shell[1;5]	ASTM E-162	$I_s \leq 35$
		ASTM E-662	$D_s(1.5) \leq 100; D_s(4.0) \leq 200$

* Refers to Notes on Table 1

BILLING CODE 4910-13-C

1. Materials tested for surface flammability should not exhibit any flaming running, or flaming dripping.

2. The surface flammability and smoke emission characteristics of seat cushion materials should be demonstrated to be permanent after testing according to ASTM D–3574 Dynamic Fatigue Tests I_s (Procedure B).

3. The surface flammability and smoke emission characteristics of a material should be demonstrated to be permanent by washing, if appropriate, according to FED–STD–191A Textile Test Method 5830.

4. The surface flammability and smoke emission characteristics of a material should be demonstrated to be permanent by dry cleaning, if appropriate, according to ASTM D–2724. Materials that cannot be washed or dry-cleaned should be so labeled, and should meet the applicable performance criteria after being cleaned as recommended by the manufacturer.

5. ASTM E–662 maximum test limits for smoke emission (specific optical density) should be measured in either the flaming or non-flaming mode, depending on which mode generates more smoke.

6. Flooring and Fire Wall assemblies should meet the performance criteria during a nominal test period determined by the transit property. The nominal test period should be twice the maximum expected period of time, under normal circumstances, for a vehicle to come to a complete, safe stop from maximum speed, plus the time necessary to evacuate all passengers from a vehicle to a safe area. The nominal test period should not be less than 15 minutes. Only one specimen need be tested. A proportional reduction may be made in dimensions of the specimen provided that it represents a true test of its ability to perform as a barrier against vehicle fires. Penetrations (ducts, piping, etc.) should be designed against acting as conduits for fire and smoke.

7. Carpeting should be tested in according with ASTM E–648 with its padding, if the padding is used in actual installation.

8. Arm rests, if foamed plastic, are tested as cushions.

9. Testing is performed without upholstery.

Definition of Terms

1. Flame spread index (I_s) as defined in ASTM E–162 is a factor derived from the rate of progress of the flame front (F) and the rate of heat liberation by the material under test (Q), such that $I_s=F_s \times Q$.

2. Specific optical density (D_s) is the optical density measured over unit path length within a chamber of unit volume produced from a specimen of unit surface area, that is irradiated by a heat flux of 2.5 watts/cm^2 for a specified period of time.

3. Surface flammability denotes the rate at which flames will travel along surfaces.

4. Flaming running denotes continuous flaming material leaving the site of the during material at its installed location.

5. Flaming dripping denotes periodic dripping of flaming material from the site of burning material at its installed location.

Referenced Fire Standards

The source of test procedures listed in Table 1 is as follows:

(1) Leaching Resistance of Cloth, FED–STD–191A–Textile Test Method 5830.

Availability from: General Services Administration Specifications Division, Building 197, Washington, Navy Yard, Washington, DC 20407.

(2) Federal Aviation Administration Vertical Burn Test, FAR–25–853.

Available from: Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

(3) American Society for Testing Materials (ASTM)

(a) Surface Flammability of Materials Using a Radiant Heat Energy Source, ASTM E–162;

(b) Surface Flammability for Flexible Cellular Materials Using a Radiant Heat Energy Source, ASTM D–3675;

(c) Fire Tests of Building Construction and Materials, ASTM E–119;

(d) Specific Optical Density of Smoke Generated by Solid Materials, ASTM E–662;

(e) Bonded and Laminated Apparel Fabrics, ASTM D–2724;

(f) Flexible Cellular Materials—Slab, Bonded, and Molded Urethane Foams, ASTM D–3574.

Available from: American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

In all instances, the most recent issue of the document or the revision in effect at the time of request should be employed in the evaluation of the material specified herein.

Issued: October 14, 1993.

Grace Crunican,

Deputy Administrator.

[FR Doc. 93–25709 Filed 10–19–93; 8:45 am]

BILLING CODE 4910–57–P

federal register

Wednesday
October 20, 1993

Part X

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report eight deferrals of budget authority, totaling $1.2 billion.

These deferrals affect International Security Assistance programs as well as programs of the Agency for International Development and the Departments of Agriculture, Defense, Health and Human Services, and State. The details of these deferrals are contained in the attached report.

William J. Clinton,

The White House, October 13, 1993.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(In thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President:	
	International Security Assistance:	
D94-1	Economic support fund	394,175
	Agency for International Development:	
D94-2	Demobilization and transition fund	8,000
	Department of Agriculture:	
	Forest Service:	
D94-3	Cooperative work	461,639
D94-4	Expenses, brush disposal	40,195
D94-5	Timber salvage sales	256,897
	Department of Defense, Civil:	
	Wildlife Conservation, Military Reservations:	
D94-6	Wildlife conservation	1,852
	Department of Health and Human Services:	
	Social Security Administration:	
	Limitation on administrative	
D94-7	expenses	7,317
	Department of State:	
	Bureau for Refugee Programs:	
	United States emergency refugee and	
D94-8	migration fund	27,100
	Total, deferrals	1,197,175

Deferral No. 94-1

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority**..... $ _____
BUREAU: International Security Assistance	**Other budgetary resources**..... $ 740,470,519
Appropriation title and symbol: Economic support fund 1/ 113/41037 11X1037	**Total budgetary resources**..... $ 740,470,519
	Amount to be deferred:
	Part of year..... $ 394,175,203
	Entire year..... $ _____
OMB identification code: 11-1037-0-1-152	**Legal authority (in addition to sec. 1013):**
Grant program: [X] Yes [ ] No	[X] Antideficiency Act
	[ ] Other _____
Type of account or fund:	**Type of budget authority:**
[ ] Annual	[X] Appropriation
[X] Multi-year: September 30, 1994 (expiration date)	[ ] Contract authority
[X] No-Year	[ ] Other _____

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Economic support fund.....	11X1037	11-1037-0-1-152	56,083,203
Economic support fund.....	113/41037	11-1037-0-1-152	338,092,000
			394,175,203

JUSTIFICATION: This account provides economic and countemarcotics assistance to selected countries in support of U.S. efforts to promote stability and U.S. security interests in strategic regions of the world. This account also includes contributions to the International Fund for Ireland. This action defers funds pending review and approval of specific loans and grants to eligible countries. This interagency review process will ensure that each approved transaction is consistent with the foreign and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1993 (D93-1A).

Deferral No. 94-2

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority**..... $ _____
BUREAU: Agency for International Development	**Other budgetary resources**..... $ 9,000,000
Appropriation title and symbol: Demobilization and transition fund 1/ 11X1500	**Total budgetary resources**..... $ 9,000,000
	Amount to be deferred: Part of year..... $ 8,000,000
	Entire year..... $ _____
OMB identification code: 11-1500-0-1-152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: This account was established to facilitate cease-fire monitoring, demobilization, and transition to peace in El Salvador. Funds were transferred into this account pursuant to P.L. 101-513, Section 531(f)(2). These funds are available solely to support costs of demobilization, retraining, relocation, and reemployment in civilian pursuits of former combatants in the conflict in El Salvador. Funds are available for obligation and expenditure only upon notification by the President to the Congress that the Government of El Salvador and representatives of the Farabundo Marti National Liberation Front (FMLN) have reached a permanent settlement of the conflict, including a final agreement on a cease-fire. This is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1993 (D93-2).

Deferral No. 94-3

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Agriculture	**New budget authority.....** $ 312,534,000 (16 U.S.C. 576b)
BUREAU: Forest Service	**Other budgetary resources.....** $ 424,848,323
Appropriation title and symbol: Cooperative work 1/ 12X8028	**Total budgetary resources.....** $ 737,382,323
	Amount to be deferred:
	Part of year..... $ _____
	Entire year..... $ 461,639,323
OMB identification code: 12-8028-0-7-999	**Legal authority (in addition to sec. 1013):**
Grant program: ☐ Yes ☒ No	☒ Antideficiency Act ☐ Other _____
Type of account or fund:	**Type of budget authority:**
☐ Annual	☒ Appropriation
☐ Multi-year: _____ (expiration date)	☐ Contract authority
☒ No-Year	☐ Other

JUSTIFICATION: Under the Cooperative work account, funds are received from States, counties, timber sale operators, individuals, associations, and others. These funds are expended by the Forest Service as authorized by law and the terms of the applicable trust agreements. The work benefits the national forest users, research investigations, reforestation, and administration of private forest lands. Much of the work for which deposits have been made cannot be done, or is not planned to be done, during the same year that the collections are being realized. Examples include areas where timber operators have not completed all of the contract obligations during the year funds are deposited. As a result, restoration efforts cannot begin, and the funds cannot be obligated this year. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1993 (D93-3).

Deferral No. 94-4

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Agriculture	**New budget authority**..... $ 24,732,000 (16 U.S.C. 576b)
BUREAU: Forest Service	**Other budgetary resources**..... $ 58,576,527
Appropriation title and symbol: Expenses, brush disposal 1/ 12X5206	**Total budgetary resources**..... $ 83,308,527
	Amount to be deferred: Part of year..... $ _____ Entire year..... $ 40,194,527
OMB identification code: 12-9922-0-2-302	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: Purchasers of National Forest timber are required to deposit to the Forest Service the estimated cost for disposing of brush and other debris resulting from timber cutting operations by 16 U.S.C. 490. The deposits becoming available in the current year are estimated and the related disposal operations are planned for the following year. Efficient program planning and accomplishment is facilitated by operating a stable program well within the funds available in any one year for this purpose . Much of the brush disposal work for which fees are collected cannot be done in the same year because of weather conditions or because harvesting is not completed. The Forest Service is planning for a stable year-to-year program, which will require $43 million in 1994. The current fiscal year reserve of $40 million is established pursuant to the provisions of the Antideficiency Act (31 U.S.C. 1512) as a reserve for contingencies.

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1993 (D93-4B).

Deferral No. 94-5

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Agriculture	**New budget authority**..... $ 170,000,000 (16 U.S.C. 576b)
BUREAU: Forest Service	**Other budgetary resources**..... $ 224,890,140
Appropriation title and symbol: Timber salvage sales 1/ 12X5204	**Total budgetary resources**..... $ 394,890,140
	Amount to be deferred: Part of year..... $ _____ Entire year..... $ 256,897,140
OMB identification code: 12-9922-0-2-302	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: The Timber salvage sales fund was established under the provisions of the National Forest Management Act of 1976, as amended, to enable immediate harvesting of dead and dying trees when required by market conditions or catastrophes. Purchasers of dead, damaged, insect-infested, or downed timber are required to make monetary deposits into this fund to cover the preparation costs for future salvage sales.

The salvage sale program is a part of the timber sales program and has specific timber volume targets assigned. Receipts to the Timber salvage sales fund are derived from annual salvage sales, net of authorized payments to States. Specific timber volume targets are assigned based on current information on salvage opportunities.

The Forest Service is pursuing a program to achieve maximum salvage volumes while protecting the full range of environmental values. The sale of approximately 1.7 billion board feet of new and existing salvage timber is planned for FY 1994. Funds are deferred pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1993 (D93-12).

Deferral No. 94-6

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Defense - Civil	New budget authority..... $ 2,525,000 (16 U.S.C. 670F)
BUREAU: Wildlife Conservation Military Reservations	Other budgetay resources..... $ 2,052,000
Appropriation title and symbol: Wildlife Conservation, Army 1/ 21X5095; Wildlife Conservation, Navy 1/ 17X5095; Wildlife Conservation, Air Force 1/ 57X5095	Total budgetary resources.... $ 4,577,000
	Amount to be deferred: Part of year..... $ ____ Entire year..... $ 1,852,000
OMB identification code: 97-5095-0-2-303	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other ____
Type of account or fund: [ ] Annual; [ ] Multi-year: ____ (expiration date); [X] No-Year	**Type of budget authority:** [X] Appropriation; [ ] Contract authority; [ ] Other ____

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Wildlife Conservation, Army.....	21X5095	97-5095-0-2-303	$ 1,250,000
Wildlife Conservation, Navy.....	17X5095	97-5095-0-2-303	$ 275,000
Wildlife Conservation, Air Force....	57X5095	97-5095-0-2-303	$ 327,000
			$ 1,852,000

JUSTIFICATION: These are permanent appropriations of receipts generated from hunting and fishing fees in accordance with the purpose of the law -- to carry out a program of natural resource conservation. These programs are carried out through cooperative plans agreed upon by the local representatives of the Secretary of Defense, the Secretary of the Interior, and the appropriate agency of the State in which the reservation is located. These funds are being deferred (1) until, pursuant to the authorizing legislation (16 U.S.C. 670f(a)), installations have accumulated funds over a period of time sufficient to fund a major

1/ These accounts were the subject of a similar deferral in FY 1993 (D93-5).

D94-6

project; (2) until individual installations have designed and obtained approval for the project; and (3) because there is a seasonal relationship between the collection of fees and their subsequent expenditure since most of the fees are collected during the winter and spring months. Funds collected in a prior year are deferred in order to be available to finance the program during summer and fall months or in subsequent years. Additional amounts will be apportioned when projects are identified and project approval is obtained. This deferral is made under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

Deferral No. 94-7

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health and Human Services	**New budget authority**..... $ _____
BUREAU: Social Security Administration	**Other budgetary resources**..... $ 7,366,594
Appropriation title and symbol: Limitation on administrative expenses 1/ 75X8704	**Total budgetary resources**..... $ 7,366,594
	Amount to be deferred:
	Part of year..... $ _____
	Entire year..... $ 7,316,594
OMB identification code: 20-8007-0-7-651	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

JUSTIFICATION: This account provides funding for construction, renovation, and expansion of Social Security Trust Fund owned headquarters and field office buildings. In addition, funds remain available for costs associated with acquisition of land in Colonial Park. In FY 1994, the Social Security Administration has received an approved apportionment for $50,000 to cover potential upward adjustments for obligation in FY 1994. This deferral reflects the actual amount available for construction in FY 1994, less the $50,000 apportioned for potential upward adjustments in FY 1994. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1993 (D93-6A).

Deferral No. 94-8

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of State	**New budget authority.....** $ _____
BUREAU: Bureau for Refugee Programs	**Other budgetary resources.....** $ 27,100,000
Appropriation title and symbol: United States emergency refugee and migration assistance fund 1/ 11X0040	**Total budgetary resources.....** $ 27,100,000
	Amount to be deferred: **Part of year.....** $ 27,100,000
	Entire year..... $ _____
OMB identification code: 11-0040-0-1-151	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual	**Type of budget authority:** [X] Appropriation
[ ] Multi-year: _____ (expiration date)	[ ] Contract authority
[X] No-Year	[ ] Other _____

JUSTIFICATION: Section 501(a) of the Foreign Relations Authorization Act of 1976 (Public Law 94-141) and Section 414(b) (1) of the Refugee Act of 1980 (Public Law 96-212) amended Section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for the Emergency Fund to the Secretary of State but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

These funds have been deferred pending Presidential decisions required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1993 (D93-7A).

[FR Doc. 93-25725 Filed 10-19-93; 8:45 am]
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federal register

Wednesday
October 20, 1993

Part XI

The President

Proclamation 6615—National Mammography Day, 1993

Federal Register
Vol. 58, No. 201
Wednesday, October 20, 1993

Presidential Documents

Title 3—

The President

Proclamation 6615 of October 18, 1993

National Mammography Day, 1993

By the President of the United States of America

A Proclamation

Breast cancer is an insidious disease that takes the lives of far too many women. This year alone, 182,000 American women are expected to develop breast cancer, and 46,000 will die of this disease. The risk of death from breast cancer is significantly reduced when the cancer is found in the earlier, more treatable stages of development. If women follow early detection guidelines, we should see a 30-percent drop in the breast cancer death rate. We all must work to ensure that every woman is informed about the serious risk of breast cancer and about the importance of regular breast exams and screening mammography. Most important, these health care procedures must be within the reach of all women.

The high survival rates of women who are diagnosed as having early stage breast cancer have motivated health professionals and other concerned citizens to focus their educational efforts on the importance of early detection. Women can take an active role in the fight against breast cancer through clinical breast exams, breast self-examination, and mammography. In many cases, cancers can be seen on a mammogram up to 2 years before they could be detected by a woman or her physician. The key to that advantage, however, is access to such screening.

I am pleased that third-party reimbursement for mammography is increasing, allowing more women to benefit from this life-saving procedure. Through Medicare, the Department of Health and Human Services covers much of the cost of screening mammography for women 65 and older. Most states and the District of Columbia now have laws requiring private insurers to offer coverage for this procedure. I urge every State government, insurance company, medical facility, and business to develop policies that ensure all women access to appropriate and affordable mammography. Of course, women must take responsibility for availing themselves of screening when it is available.

Likewise, health care professionals must make sure that their patients receive regular breast cancer screening. Businesses must offer screening to their employees in the form of insurance coverage or services offered. Community organizations and individuals not only must spread the word about the importance of early detection, but also must motivate women to get regular screenings.

I am heartened that we have the technology to discover breast cancer in its earliest stages, the means to motivate women to get regular mammograms, and the capability to treat early breast cancer successfully in most cases. These resources can save the lives of countless women. For the sake of American women and their loved ones, we all must strive to see that every woman is educated about early breast cancer detection and that she has access to all needed health care.

In recognition of the crucial role of mammography in the battle against breast cancer, the Congress, by House Joint Resolution 265, has designated October 19, 1993, as "National Mammography Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 19, 1993, as "National Mammography Day." I invite the Governors of the 50 States and the Commonwealth of Puerto Rico, the Mayor of the District of Columbia, and the appropriate officials of all other jurisdictions under the American flag to issue similar proclamations. I also ask health care professionals, private industry, advocacy groups, community associations, insurance companies, and all other interested organizations and individuals to observe this day by publicly reaffirming our Nation's continuing commitment to the control of breast cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of October, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-26811
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Billing code 3195-01-P

Editorial note: For the President's remarks on signing this proclamation, see the *Weekly Compilation of Presidential Documents* [vol. 29, no. 42].

Reader Aids

Federal Register

Vol. 58, No. 201

Wednesday, October 20, 1993

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FEDERAL REGISTER PAGES AND DATES, OCTOBER

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

625.....53172
628.....53172
641.....52063, 52073, 52474
642.....54108
646.....53183
649.....53172
650.....53172
651.....52073, 53172
652.....53172
655.....53172
675.....53497

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List October 18, 1993